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Thesis Title: The formulation of infrastructure PPP projects in  
BRAZIL

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THE FORMULATION OF PUBLIC-PRIVATE PARTNERSHIP  
PROJECTS FOR INFRASTRUCTURE DEVELOPMENT IN  
BRAZIL: AN INSTITUTIONAL ANALYSIS OF THE  
MUNICIPALITY OF FORTALEZA

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## **Abstract**

There are strong indications that Public-Private Partnership (PPP) will remain the preferred policy tool for provision of infrastructure development in Brazil, involving private sector participation in the design, construction and operation stages of public infrastructure projects. For PPP project formulation, governments in Brazil have increasingly relied on the Procedure for Request of Interest (PRI), in which project design costs are transferred to the private sector, and actors engage in informal pre-tendering interactions since no formal contract binds them in the process. However, many PRI cases are still struggling to complete the pre-tendering stage or have failed entirely, and there is evidence indicating problems with the elements currently used to arrange PPP formulation processes. This research, therefore, was undertaken to explore why many cases are not finishing the PRI pre-tendering process by unpacking the unclear workings of actor-relations at this stage. Since the PRI process highly depends on interactions, this research explored the dynamics of actor-relations in the formulation of an infrastructure PPP project that used the PRI mechanism and completed the pre-tendering stage in the municipality of Fortaleza. From an institutional perspective and using a qualitative approach based on 34 interviews as primary data collection method, this research focused on the adjustments in practices and perceptions, as well as on the institutional framework influencing the process. The findings indicate that many PRI cases have not been successful because the policy instrument largely focuses on structures and neglects the intrinsic and socially constructed elements of the process. The findings also indicate that the PRI formulation of infrastructure PPP projects requires a balance between formal and informal elements, between structures and internally developed “soft” control mechanisms and between guidance and strategic flexibility, as well as the recognition of the complexity involved and the contextual embeddedness of actor-relations for PPP formulation.

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in the name of our Lord Jesus Christ  
(Ephesians 5:20)*

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## Table of Contents

<b>Abstract.....</b>	<b>i</b>
<b>Acknowledgments .....</b>	<b>i</b>
<b>List of Figures .....</b>	<b>vii</b>
<b>List of Tables.....</b>	<b>vii</b>
<b>Chapter 1- Introduction .....</b>	<b>1</b>
1.1    Motivation .....	1
1.2    Aims and objectives.....	8
1.3    Structure of Thesis.....	8
<b>Chapter 2 - Public-Private Partnerships for infrastructure development: policy and practice .....</b>	<b>10</b>
2.1    Introduction .....	10
2.2    The concept of Public-Private Partnership (PPP) as policy instrument for infrastructure development.....	10
2.3    Historical evolution towards PPPs as policy instruments.....	16
2.4    Advantages & Criticisms of the PPP policy instrument .....	18
2.5    PPPs around the world .....	19
2.6    PPPs in Brazil.....	20
2.7    The formulation of PPP projects in Brazil: the Procedure for Request of Interest (PRI) .....	23
2.7.1    The pre-tendering stage of PPP project formulation .....	23
2.7.2    Complexity of the PRI pre-tendering process.....	28
2.7.3    Summary of section .....	31
2.8    The elements of the Brazil PPP Framework for PRI pre-tendering formulation of PPPs .....	32
2.8.1    Policy framework: PPP as priority instrument in specific infrastructure sectors .....	32
2.8.2    Legal and regulatory framework: legal rules and conditions .....	36
2.8.3    Organizational framework: organizational and human capacity.....	39
2.8.4    Instrumental strategic framework: PRI decrees and manuals of best practices .....	42
2.8.5    Summary of section .....	46
2.9    Conclusion .....	47
<b>Chapter 3 - Public and private actors in Public-Private Partnership (PPP) projects.....</b>	<b>48</b>
3.1    Introduction .....	48
3.2    The external forces.....	50
3.2.1    Legal and regulatory elements.....	50
3.2.2    Organizational and administrative structures.....	51
3.2.3    Strategic approach .....	51

3.2.4	Policy elements.....	52
3.2.5	Political culture .....	53
3.2.6	Summary of section .....	54
3.3	The dynamics of public-private interactions .....	56
3.3.1	Formal and informal dynamics of actor-relations .....	57
3.3.2	Actors as creative learners.....	61
3.3.3	The role of social context .....	63
3.3.4	Summary of section .....	64
3.4	Insights into the Brazilian context for pre-tendering PPP formulation under the Procedure for Request of Interest (PRI) mechanism.....	65
3.5	Summary and conclusion .....	67
Chapter 4 - Theoretical Framework .....		68
4.1	Introduction .....	68
4.2	Institutional theory .....	70
4.2.1	New Institutional theory .....	71
	<i>Rational choice institutionalism</i> .....	72
	<i>Sociological-organizational institutionalism</i> .....	73
4.2.2	Old Institutional theory .....	79
4.3	Conclusion .....	84
Chapter 5 - Towards a Conceptual Framework .....		86
5.1	Introduction .....	86
5.1.1	The social system .....	86
5.1.2	Research questions .....	87
5.1.3	Introduction to the conceptual framework.....	88
5.2	Diagram of the Conceptual Framework .....	89
5.3	Analytical concepts.....	90
5.3.1	External forces .....	90
5.3.2	Dynamics of formal and informal actor-relations .....	93
5.3.3	‘Ways of thinking and acting’ .....	95
5.4	Systemic processes .....	99
5.4.1	Systemic process 1: production and reproduction of a ‘Systemic Institutional Arrangement’ .....	99
5.4.2	Systemic process 2: production and reproduction of embedded ‘ways of thinking and acting’ (assumptions and biases) .....	100
5.4.3	Systemic process 3: production and reproduction of innovative ‘ways of thinking and acting’ (overcoming of embedded assumptions and biases) .....	102
5.5	Approach to the second research question (lessons learned to inform recommendations) .....	106
5.6	Summary of Conceptual Framework .....	106
Chapter 6 - Research Strategy and Methods.....		109
6.1	Introduction .....	109
6.2	Philosophical Background .....	109
6.3	Brief review of research topic & case study location .....	112

6.4	Approach to inquiry: case study .....	113
6.5	Approach to data collection .....	118
6.6	Data collection .....	118
6.6.1	Documents .....	119
6.6.2	Meetings .....	120
6.6.3	The collection of interview data .....	120
6.6.4	Timeframe of data collection .....	127
6.7	Data Analysis.....	129
6.7.1	Data management: storing, transcribing and translating (the case study database) .....	129
6.7.2	Familiarization: organizing and coding the data .....	130
6.7.3	Description .....	131
6.7.4	Analysis .....	132
6.7.5	Interpretation .....	134
6.8	Validity and Reliability .....	134
6.8.1	Reliability: dependability.....	134
6.8.2	Internal Validity: credibility .....	135
6.8.3	External Validity: transferability .....	137
6.9	Brief summary of the chapter .....	137
<b>Chapter 7 - Descriptive-Analysis of EPISODE 1 .....</b>		<b>139</b>
7.1	Introduction .....	139
7.2	Policy arrangement: prioritizing PPP as policy instrument for the city centre urban mobility project.....	139
7.2.1	The construction of policy scope: external influences and conciliation of interests .....	140
7.2.2	The selection of the PPP as policy instrument: overcoming biases and the use of rules of appropriateness .....	149
7.2.3	Summary of Section .....	154
7.3	Creating the legal arrangement for the process of PPP formulation .....	154
7.4	The local organizational arrangement and human capacity for the PPP formulation.....	158
7.5	The instrumental strategic arrangement: the influence of the Ceara state's government approach .....	160
7.6	Summary of Chapter.....	163
7.6.1	Systemic Policy Arrangement .....	163
7.6.2	Systemic Legal Arrangement .....	163
7.6.3	Systemic Organizational Arrangement .....	164
7.6.4	Systemic Strategic Arrangement .....	164
7.7	Conclusion .....	164
<b>Chapter 8 - Descriptive-Analysis of EPISODE 2 .....</b>		<b>166</b>
8.1	Introduction .....	166
8.2	Complementing the 'systemic institutional arrangement' .....	167
8.2.1	Strategic Framework: elaboration of instrumental strategy.....	167

8.2.2	Organizational Framework for strategy implementation: consultancy coordinators and detachment from public and private actors and consultancy directors .....	170
8.2.3	The Legal Framework for strategy implementation: Sao Paulo legal office .....	173
8.2.4	Summary of section and concluding thoughts .....	174
8.3	Enactment and readjustment of 'systemic institutional arrangement' .....	175
8.3.1	Initiative, collaboration and flexible network relations in an emergent strategy .....	176
8.3.2	'Political Consensus Building' in the selection of properties: preventing judicial obstacles and resistance from street vendors .....	179
8.3.3	'Political Consensus Building' in PCC and parking lot facility specifications: preventing resistance from street vendors and public sector.....	183
8.3.4	'Political Consensus Building' in communication .....	185
8.3.5	Summary of section .....	189
8.4	Submission of city centre PPP project design and rejection by the local government .....	190
8.5	Summary of Chapter.....	193
8.5.1	Systemic Policy Arrangement .....	193
8.5.2	Systemic Legal Arrangement .....	194
8.5.3	Systemic Organizational Arrangement .....	195
8.5.4	Systemic Strategic Arrangement .....	195
8.6	Conclusion .....	196
Chapter 9	Descriptive-Analysis of EPISODE 3 .....	198
9.1	Introduction .....	198
9.2	Policy Arrangement: the role of 'commitment packages' .....	198
9.2.1	Public sector .....	199
9.2.2	Private investors .....	200
9.2.3	Consultancy .....	202
9.2.4	Summary of Section .....	203
9.3	Organizational Arrangement.....	203
9.4	Legal Arrangement .....	206
9.5	Strategic Arrangement: the 'learning by doing' approach .....	207
9.5.1	Conciliations between public and private actors over pecuniary payment composition, demand risk and compulsory purchase costs .....	208
9.5.2	Concerns with political risks and agreement on the pecuniary payment guarantee arrangement to be offered by the municipality for the PPP .....	212
9.5.3	Influence of mayor in PPP project adjustments .....	217
9.5.4	Summary of Section .....	218
9.6	Towards completion of the PRI pre-tendering process.....	220
9.6.1	Formal legal route: perception of private investors and consultancy actors .....	221
9.6.2	Adjustment in the legal arrangement: informal route adopted by the local government.....	224
9.6.3	Summary of Section .....	226
9.7	Summary of Chapter.....	227



9.7.1	Systemic Policy Arrangement: .....	227
9.7.2	Systemic Legal Arrangement .....	228
9.7.3	Systemic Organizational Arrangement .....	229
9.7.4	Systemic Strategic Arrangement .....	230
<b>Chapter 10 - Conclusion .....</b>		<b>232</b>
10.1	Summary of findings.....	232
10.2	Research Question 1: Summary of case study .....	234
10.2.1	Policy Arrangement.....	234
10.2.2	Legal Arrangement.....	237
10.2.3	Organizational Arrangement .....	238
10.2.4	Strategic Arrangement .....	239
10.3	Research Question 2: Reflections on wider implications (lessons learned).....	241
10.3.1	General implications: context matters .....	242
10.3.2	General implications of process for policy-making.....	243
10.3.3	General implications of process for practice.....	250
10.3.4	Informing recommendations .....	255
10.4	Reflections on learning from the research process [removed weaknesses].....	263
10.5	New questions and future directions.....	266
10.5.1	Future research.....	266
10.5.2	Policy/Practice community .....	267
<b>References .....</b>		<b>269</b>
<b>Appendix 1: List of Documents.....</b>		<b>295</b>
<b>Appendix 2: List of Meetings.....</b>		<b>296</b>
<b>Appendix 3: Interview schedule (topics and questions) .....</b>		<b>297</b>
<b>Appendix 4: Information Sheet .....</b>		<b>299</b>
<b>Appendix 5: Consent Form .....</b>		<b>300</b>
<b>Appendix 6: List of interviewees per group and job title .....</b>		<b>301</b>

## List of Figures

<i>Figure 1 - Phases of PPPs in Brazil: from design to implementation .....</i>	<i>27</i>
<i>Figure 2 - Diagram of Conceptual Framework .....</i>	<i>89</i>
<i>Figure 3 - Location of the municipality of Fortaleza in the map of Brazil. ....</i>	<i>112</i>
<i>Figure 4 - Groups of interviewees .....</i>	<i>123</i>

## List of Tables

<i>Table 1 - Typology of Framework for Pre-tendering PPP Formulation based on the PRI Mechanism.....</i>	<i>7</i>
<i>Table 2 - Typology of Policy Instruments in Brazil for Infrastructure Development .....</i>	<i>15</i>
<i>Table 3 - Procedures for Request of Interest (PRIs) - state level .....</i>	<i>34</i>
<i>Table 4 - External forces (Conceptual Framework) .....</i>	<i>92</i>
<i>Table 5 - Capacity factors: hard and soft elements .....</i>	<i>98</i>
<i>Table 6 - Timeframe of data collection .....</i>	<i>128</i>
<i>Table 7 - Descriptive Episodes of Interaction .....</i>	<i>132</i>
<i>Table 8 - Descriptive-Analytical Episodes of Interactions .....</i>	<i>134</i>
<i>Table 9 – Link between Chapters and Phases of Interactions in the Case Study .....</i>	<i>138</i>

# Chapter 1- Introduction

## 1.1 Motivation

This thesis is a study of the dynamics of relations between public and private actors for the formulation of Public-Private Partnership (PPP) projects for infrastructure development in Brazil. There are strong indications that the PPP instrument will be continuously selected as a policy tool by governments at the federal, state and municipal levels due to its perceived benefits and the large number of projects being elaborated. In Brazil, the PPP instrument is used for the provision of public services associated with infrastructure development with the participation of the private sector in the design, construction, financing and operation stages. For the formulation of PPP projects, governments at all levels have relied on the Procedure for Request of Interest (PRI), which has been favoured because the other alternatives available face a series of constraints. Based on the PRI mechanism, the government transfers costs of PPP project formulation to the private sector, and actors engage in informal interactions since no formal contract binds them in the formulation process. These interactions take place at the pre-tendering stage, prior to the competitive bidding process for the selection of the private company that will sign a contract with the public sector and implement the PPP project. Although the PRI mechanism has been increasingly selected in Brazil for the formulation of infrastructure PPP projects, many cases have failed or are still struggling to complete the pre-tendering process. There is evidence that the approach currently used to arrange and organize these arrangements of PPP formulation has neglected the role of process and focused on structural elements that have not been sufficient to support many PRI cases towards completion of the pre-tendering stage.

In view of these observations, the main motivation for this research is to understand why many cases of PPP project formulation do not finish the PRI pre-tendering stage. Thus, this research aims to explore the pre-tendering formulation of PPP projects based on the PRI mechanism and the elements that influence the process through an understanding of the pre-tendering dynamics of relations between actors. The workings of actor-relations in this stage are still unclear, especially considering that the Procedure for Request of Interest (PRI) is a new mechanism involving the private sector in the formulation of projects. The focus adopted in the research, which is on the dynamics of relations in the process, is an innovative approach to policy analysis in Brazil, considering that most research done so far in this field is not on the process of policy-making, but

mostly on its outcomes (Vaitsman, Ribeiro & Lobato, 2013, p. 1). Moreover, since the publication of the 1988 Federal Constitution, after nearly 20 years of military dictatorship in Brazil, policy analysis has been mostly based on quantitative methods for decision-making and outcome assessment and frequently focused on three areas of services: health, education and social assistance (Andrews, 2013, p. 29). Therefore, this research is a novel qualitative study considering that the focus is about actor-relations in the process of PPP project formulation for policies in infrastructure development. It is an in-depth exploration of the PRI pre-tendering formulation of a PPP project based on 34 interviews, of which 11 were undertaken with actors from the public sector, 9 with private actors and 14 with technical actors.

Setting the scenario for the research, this chapter will provide a brief introduction on the Brazilian context for Public-Private Partnership projects in infrastructure and for their formulation based on the PRI mechanism, as well as on the elements that have been insufficient to support many PRI cases towards completion of the pre-tendering stage. This chapter will also present the research aim and objectives, followed by a summary of the structure of the Thesis.

In Brazil, Public-Private Partnerships (PPPs) as an instrument for the provision of infrastructure have received increased attention from the federal government, states and municipalities since the publication of the federal PPP law in 2004. The main drivers for the use of PPPs are the need for better social and economic infrastructure in Brazil to stimulate economic growth and development and for more investment in urban mobility, energy, telecommunications, basic sanitation, transportation and logistics infrastructure such as highways, railways and ports, which are precarious and outdated. Considering this, Brazilian governments at federal, state and municipal levels have adopted PPPs as an alternative to the lack of sufficient government resources in order to obtain immediate private funding for long-term projects. However, PPPs as a policy instrument have been sub-utilized in Brazil. The total of approximately 50 projects at municipal, state and federal levels that have reached PPP contract signature is still considered a small number for the country's need in infrastructure development (Enei & Mundim, 2013).

Despite the interest in the PPP instrument, there are numerous criticisms because many attempts have not moved past the PRI pre-tendering elaboration phase, delaying the utilization of the instrument to promote the development of the country's infrastructure (Pereira, 2012a; Pereira, 2013). According to the only extensive report published to date on

PPPs in Brazil which covers state level, 21 cases of PPP formulation based on the PRI mechanism were launched between 2007 and 2010, and 65 PRI cases between 2011 and 2012, in sectors such as logistics, transportation, urban mobility, basic sanitation, health, security and others (Pereira, 2013; Pereira, Vilella & Salgado, 2012). Furthermore, an update of the report shows that between January and June 2013, there were additional 15 state level PRI publications (Pereira, 2013). Although these numbers show that the Procedure for Request of Interest has received increased attention; the report shows that among the PRIs launched between 2011 and 2012, a total of 39 cases have not been able to complete the pre-tendering process (Pereira, 2013; Pereira et al., 2012). According to experts, officials and private actors in Brazil, the number of incomplete PRIs is high and could discredit a mechanism that is considered an essential alternative for the formulation of expensive and complex PPP projects for infrastructure development in Brazil (Pereira, 2013).

It is generally acknowledged that the elaboration of a PPP project is challenging and complex. According to the literature, the complexity of PPP project formulation is related to the fact that the PRI process depends on a large number of stakeholders, on their interdependencies and interactions during the informal pre-tendering stage (Enei & Mundim, 2013; Pereira, 2011b; Pinheiro, 2011). In their analysis of the scenario for PPPs in Brazil, Enei and Mundim (2013) emphasize that a major challenge lies at initial design of PPP projects, in the process of formulating such projects. As Pereira (2011b) and Pinheiro (2011) explain, the complexity of developing PPP projects implies an intensive work about the feasibility of the infrastructure services that will be granted to the private initiative for project execution. This intensive work is based on the production of demand, engineering, environmental, legal, economic and financial studies which require thorough technical analysis and substantial time (Pereira, 2011b; Pinheiro, 2011).

In the attempt to get these projects off the ground, governments in Brazil have adopted the Procedure for Request of Interest mechanism for the PPP project design and transferred the costs for project formulation to the private sector. The other option in which the public sector retains the costs involves using internal capacity of civil servants or hiring external organizations and consultants that offer project elaboration services, such as the Brazilian Development Bank (BNDES) or the Brazilian Project Company (EBP) (Pereira, 2011b; M. P. Ribeiro, 2012a). Although this latter option has been selected for the elaboration of some projects, the current tendency has been to use the PRI mechanism for

its perceived benefits. With the PRI mechanism, the government not only aims to prevent budget burdens for project elaboration and capitalize on private sector innovation and resources for this task, but also to build up the public sectors' project database (Haje, 2010). It also aims to launch innovative and high quality projects that present cost-effectiveness of public money in the official tendering process for future project execution.

Nevertheless, in many states and municipalities in Brazil public and private actors have not been able to complete the PRI pre-tendering process for the elaboration of PPPs, failing to support many cases towards the implementation stage. There are substantial complaints from the private sector that companies have been investing at their own risk in the elaboration of expensive and complex PPP projects that are not reaching the market through tendering competition for contract execution. This is considered one of the main reasons private parties choose to participate in PRI pre-tendering processes, in the expectation to win tendering competitions and to profit from the intervention after contract signature (Pereira, 2013).

In attempts to organize the PRI pre-tendering process for the formulation of PPP projects, governments in Brazil have focused on four aspects: (1) expression of PPP as priority instrument for specific infrastructure sectors; (2) implementation of clear legal frameworks; (3) well-established organizational frameworks with trained teams of civil servants; and (4) clear instrumental strategic parameters to guide public-private actors in the pre-tendering process (Bonelli & Iazzetta, 2004; Enei & Mundim, 2013; Pereira, 2011a; Pereira, 2012b). These four aspects represent the Brazil PPP Framework, which is the term that will be used in this research to refer to the combination of the four aspects that have oriented most PRI cases in Brazil. The Framework introduces four non-temporal and non-spatial concepts for PRI processes and assumes that they can lead PPP formulation cases towards completion of the pre-tendering stage. The focus of public and private sectors in Brazil has been on suggesting the strengthening of the Framework, even though it has been unable to support many PRI cases towards completion.

Considering the first element, Brazilian governments have clearly expressed interest in the use of the PPP instrument as a priority through the National Plan of Integrated Logistics and through the announcement of priority sectors such as airports, ports, highways and urban mobility. It has also focused on the second element, of clear legal frameworks by passing in 2012 a revision of the 2004 federal PPP legislation to stimulate public and private interest in the use of PPPs as policy instrument for the

provision of infrastructure (Law n. 12766, 2012). Many states and municipalities have also created their respective legal frameworks by publishing PPP Laws and PPP Decrees. As for the third element, the federal government, states and municipalities have also invested in the implementation of organizational frameworks, creating PPP Managing Councils and technical PPP units, as well as promoting trainings and seminars, in order to strengthen the capacity of the public sector in PRI pre-tendering processes. Finally, considering the strategic approach for the PRI formulation of PPPs, there has been an increasing tendency by states and municipalities to create manuals of best practice setting pre-defined parameters for decision making, as well as to publish Decrees of Procedure for Request of Interest, establishing instrumental strategies for PPP project design. These strategies focus on setting pre-defined goals, budgets, timelines and activities for achieving better performance and efficiency in the elaboration of PPP projects.

Moreover, from the perspective of the private sector and experts in Brazil, in order to improve the process of PPP formulation towards implementation, the focus has also been on strengthening the elements of the PPP Framework. For the private sector, political agents must overcome ideological biases against the use of the PPPs and choose to prioritize the instrument, especially for areas such as transportation and urban mobility, telecommunications and sanitation (Brazilian Federal Court of Accounts, 2011; M. P. Ribeiro, 2012a). Other aspects private actors mention as important include legislations to regulate the procedures of the PRI mechanism, better credit conditions and improvements in the technical capacity of public actors, which are in line with the elements of the Brazil PPP Framework (Brazilian Federal Court of Accounts, 2011; M. P. Ribeiro, 2012a). Moreover, according to Pereira (2011a), an expert in PRIs and PPPs in Brazil, it is essential the setting of ex ante decision-making parameters to structure the PRI process. For him, the lack of parameters prior to the process is a burden that conspires against the public manager. Pereira (2011a) adds that the prior publication of the premises that will involve decision making of the public sector on PPP projects is more liberating than it might initially seem (Pereira, 2011a, own translation).

Nevertheless, despite suggestion from the private sector that governments should reinforce the structuring elements of the Brazil PPP Framework and continuous attempts by the federal, state and municipal governments to strengthen them, the Framework has been unable to support many PRI cases towards completion of the pre-tendering stage.

In view of this problem and to understand why many cases of PPP project formulation are not finishing the PRI pre-tendering stage, this research will study the process of PPP formulation and the dynamics of actor-relations through a case study that has completed the pre-tendering stage based on the Procedure for Request of Interest. It is important to consider that completing the PRI pre-tendering stage is the first step towards the use of the PPP instrument for obtaining additional investment for infrastructure development in Brazil. Since discussions on the PPP theme in Brazil have focused on structural approaches and overlooked the role of process, in the case study selected for this research, an initial attempt was made to fill in this gap by getting stakeholders to reflect on the dynamics of actor-relations and the complexity of the PPP formulation process.

The case study selected for this research is important because it is an urban mobility infrastructure project that has completed the PRI process in a scenario that was more complicated than the other PRI cases because it lacked the elements of the Brazil PPP Framework prior to actors' engagement in the PRI process. This case will provide information on elements that influence actors' interactions in the formulation of infrastructure PPP projects and on recommendations for the pre-tendering process based on the PRI mechanism.

The case study is the formulation of an urban and social mobility infrastructure PPP project for the re-ordering of the city centre of Fortaleza, Brazil. Besides not having an initial PPP Framework, it is a municipal PRI pre-tendering process that faced increased complexity due to additional regulatory requirements for the use of PPPs as policy instrument in a municipality. In addition to that, in Brazil, interventions for urban re-organization, development or regeneration have not yet been placed as priority sectors of infrastructure development for the use of PPPs. Moreover, the municipality also lacked a PPP law and decree and PRI procedures, and its public sector team had limited training and no previous experience in PPPs or PRI pre-tendering processes. The following Table 1 summarizes the four elements of the Brazil PPP Framework and presents respective observations about the absence of these elements in the initial stages of the case study.



Table 1 - *Typology of Framework for Pre-tendering PPP Formulation based on the PRI Mechanism*

Typology	Brazil PPP Framework as initial driver for PRI process of PPP project formulation	Case study: lacking PPP Framework for the process
<b>Policy Framework: PPP determined as priority instrument for specific sectors of infrastructure development</b>	Clear ex ante influential environment promoted for use of PPP policy instrument in specific sectors, expressed through political will, economic stimulus, favourable financial scenario	Non-clear sectoral scope for use of PPP instrument promoted prior to pre-tendering engagement in the policy formulation process (PPPs not expressed as preferred instrument and not prioritized in agenda of public sector)
<b>Legal and Regulatory Framework: legal rules, procedures and conditions</b>	Existing PPP legislation (law and decrees) that sets legal boundaries, conditions, criteria and standardized procedures for the structuring of PPP projects through PRI mechanism	Absence of PPP legislation (no municipal PPP law or PRI decrees) to orient actors prior to their engagement in the process
<b>Organizational Framework: organizational and human capacity</b>	Organizational frameworks in place, generally created by PPP Decrees and represented by Managing Councils (or Committees) and PPP Units (or Technical Groups). Seminars and trainings promoted, teams with specialized (sectoral) knowledge, background and experience in PPPs	Fragile PPP organizational framework. No officially published PPP Decree, creating Managing Council and PPP Units. Limited or no background and experience in PPPs or PRI pre-tendering processes. Limited PPP training and technical knowledge
<b>Instrumental Strategic Framework</b>	PRI decrees in place with pre-designed strategic guidelines, as well as availability of manuals of best practices	Absence of published PRI decrees; lack of manuals and guidelines or database of previous projects

The next section considers the aims and objectives of this research, followed by a summary of the structure of the Thesis.

## **1.2 Aims and objectives**

The principal aim of this research is to understand why few cases of PPP project formulation are finishing the PRI pre-tendering stage. It does this by unpacking the as-yet unclear workings of actor-relations at this stage of the process. More specifically, this research explores actor-relations in the formulation of an infrastructure PPP project that completed the pre-tendering stage based on the Procedure for Request of Interest (PRI) mechanism. This study also intends to inform recommendations for the PRI pre-tendering formulation process of infrastructure PPP projects in Brazil.

The objectives of this research are:

1. To identify the actors involved in the PRI pre-tendering stage and their relations in the PPP formulation process;
2. To understand how actors' constructed and enacted a 'PPP Framework' through their relations, and how it influenced actors in the completion of the PPP formulation process in the PRI pre-tendering stage; and
3. To learn lessons for the formulation of infrastructure PPP projects in Brazil in the PRI pre-tendering stage.

## **1.3 Structure of Thesis**

After this introduction, Chapter 2 clarifies the context of this research, discussing the concept of Public-Private Partnerships as policy instrument for infrastructure development worldwide and in Brazil, the historical evolution that led to the use of PPPs, advantages and criticisms, and examples of the use of PPP in different countries. After this, Chapter 2 discusses PPPs for infrastructure development in the Brazilian context and details the pre-tendering process of PPP formulation based on the PRI mechanism. It also explains each of the elements of the Brazil PPP Framework, showing that they have been insufficient to support many PRI cases towards completion of the pre-tendering stage.

Chapter 3 examines the literature on Public-Private Partnerships and identifies the main elements suggested to influence the formulation of such projects. This chapter demonstrates that the formulation of PPPs is influenced by aspects that go beyond legal and contractual relations, formal organizational arrangements, instrumental strategies and external policy stimulus to also emphasize the dynamics and complexity of interactions between public and private actors.

Chapter 4 discusses the research theoretical approach, which is primarily based on the old institutional theory. This chapter explains that, based on the theoretical framework adopted, the PRI pre-tendering formulation of PPPs is perceived as a dynamic and socially constructed process in which practices and assumptions are produced and reproduced in on-going formal and informal relations between actors.

Chapter 5 presents the conceptual framework that will be used to analyze the case study and to answer the research questions, which are presented in this chapter. The framework focuses on contextual processes of reinforcement and overcoming of 'ways of thinking and acting' in the pre-tendering stage of PPP formulation. These processes and four main analytical concepts are explained in this chapter: the dynamics of formal and informal actor-relations; practices, opinions, perceptions and expectations; attitudes, strategies, resources and skills; and the influence of external forces.

Chapter 6 describes the research design and the methods used as strategy to implement the research. It justifies the design based on philosophical assumptions grounded on the social construction of institutions by actor-relations, which can in turn affect preferences, expectations and opinions that guide actors' interactions and behaviour. This chapter also explains the qualitative line of inquiry adopted and the approach to data collection and analysis. It explains the selection of a holistic case-study for the analysis of an urban mobility infrastructure PPP project that completed the PRI pre-tendering formulation stage, which is the city centre re-ordering PPP for the municipality of Fortaleza, Brazil.

Chapters 7, 8 and 9 provide the results of the qualitative study undertaken in this research. This involves a chronological descriptive-analysis of actor-relations in different stages of the PPP formulation process in the case study selected for this research.

Chapter 10 presents the concluding thoughts from the analysis. It presents answers to the research questions, including recommendations for policy and practice based on reflections on wider implications. It also presents reflections on the research process and new questions and future directions for the research and policy/practice communities.

## **Chapter 2 - Public-Private Partnerships for infrastructure development: policy and practice**

### **2.1 Introduction**

The purpose of this chapter is to contextualize the research topic by first discussing the concept of Public-Private Partnerships (PPPs) as a policy instrument for infrastructure development worldwide and in Brazil, considering its historical evolution, advantages and criticisms and the use of PPP in different countries. Second, this chapter focuses on the Brazilian PPP context and demonstrates that PPPs have been selected by governments at federal, state and municipal levels as an additional source to complement the funding gap for investment in economic and social infrastructure. Third, it introduces the pre-tendering process of PPP formulation based on the Procedure for Request of Interest (PRI) mechanism by explaining two main aspects: (1) the pre-tendering stage; and (2) the complexity of the process. Finally, the chapter explains the framework that has been in place guiding actor-relations in the process, which is called the Brazil PPP Framework in this research. It focuses on each element (policy, legal, organizational and strategic) and demonstrates that they have been insufficient to support many PRI cases towards completion of the pre-tendering stage, based on examples and evidence from Brazil.

### **2.2 The concept of Public-Private Partnership (PPP) as policy instrument for infrastructure development**

In several countries the concept of Public-Private Partnership (PPP) has been adopted in different ways as a policy instrument to bring private financing for the provision of public services. A policy instrument can be defined as a tool or technique of public action for the delivery of public policy goals (Salamon, 2000; Voß, 2007). PPPs have been used as an instrument for the provision of public services associated with the promotion of infrastructure development. It is often used when governments want alternative sources of funding for expansion of urban assets and services and decide to take advantage of partnerships with the private sector for access to innovation, finance, knowledge of technologies and managerial efficiency (HM Treasury, 2012; S. Kumar & Prasad, 2004). Since the 1980s, with the crisis of the interventionist state and the introduction of neoliberal ideas, many countries have adopted a pattern of private financing as public policy instrument for economic and social development (Gouveia, Abdalla & Calvosa, 2009).

In developing countries like Brazil, India and China, facing fast urbanization and urban infrastructure gaps, private financing in infrastructure has been directly associated with economic and social development (Lakshmanan, 2008; Wang, 2013; Yang, Hou & Wang, 2013). It is argued that adequate provision of infrastructure services is essential for increased productivity and efficiency, economic growth and even reduction in income inequality (Calderon & Servén, 2004; Ceratti, 2013; Graefe & Alexeenko, 2008; Lakshmanan, 2008; Stanley, 2011; UNECE, 2012).

The infrastructure for which PPPs is often used as policy instrument is usually defined in three ways: economic infrastructure, social infrastructure and government infrastructure. Economic infrastructure refers to the provision of physical assets and associated services for economic growth, such as sanitation, energy, transit and mobility, ports, railways, bridges, and highways (Sluger & Satterfield, 2010). Social infrastructure is often connected to the provision of physical assets and services for human development, in sectors such as education, popular housing, health care and security (i.e. prisons, rehabilitation centres) (Anker, 2012). Government infrastructure includes the provision of facilities for citizen services and administrative centres. Besides these three types, there are also other forms of infrastructure for which governments use private financing, such as cultural, sports and recreational infrastructure (i.e. football stadiums, convention centres, parks, museums) or a combination of different types in urban infrastructure regeneration, re-organization or redevelopment projects (Regenerating Intermediate Landscapes, 2012). These might involve the transformation of public parks, transit systems, civic spaces, housing, and other type of real estate, as well as the recovery of derelict areas in urban centres (Regenerating Intermediate Landscapes, 2012).

Although it is generally acknowledged that PPPs are important policy instruments channelling private financing into the provision of infrastructure, there is no single definition for Public-Private Partnerships (PPPs) across countries (Asian Development Bank, 2008; Hodge & Greve, 2007; Pinto, Godoy & Ribeiro, 2011; World Bank, 2012b; Zhang, 2005a). Among many aspects, the different definitions vary in terms of the partners involved, the arrangement type and the task of the partnership.

While PPPs are frequently considered any interaction between the public and private sectors in development cooperation; it can also define any form of cooperation between government and non-governmental entities, including not only businesses, but also voluntary organizations (NGOs, trade unions), knowledge institutes or communities,

which is a definition adopted in the Netherlands and in the United States (Netherlands Ministry of Foreign Affairs, 2013). There are also approaches to PPPs that differ on the formality of the arrangement between sectors. While it can be considered a loose agreement between public and private sectors (i.e. Netherlands and United States); other concepts emphasize the formal and contractual character of the partnership (i.e. Australia and Brazil). Definitions of PPPs also vary according to their objectives. In certain cases, PPPs and privatization are used interchangeably, in which partnerships are considered the transfer of asset ownership (sale of assets) from the government to the private initiative (i.e. United States). According to most perspectives, however, the objective of PPPs is the provision of public infrastructure services or assets by the private sector on behalf of the government, not necessarily involving transfer of asset ownership (Asian Development Bank, 2008; Australian Government, 2008; HM Treasury, 2012; Netherlands Ministry of Foreign Affairs, 2013; World Bank, 2012b). Despite the different types of PPPs and concepts adopted across countries and organizations, many share common characteristics with the PPP approach used in Brazil. The definitions usually agree that public and private actors engage in contractual partnerships for the provision of public asset or services, in which there is sharing of risks and resources for infrastructure development (Australian Government, 2008; HM Treasury, 2012; NCPPP, 2013; Netherlands Ministry of Foreign Affairs, 2013; World Bank, 2012b).

In Brazil, the concept of Public-Private Partnerships has a clear definition that involves the main aspects shared by the approaches of other countries. The definition of PPPs used for this research is the one officially adopted by the Brazilian 2004 federal law on Public-Private Partnerships in Brazil, in which PPPs are considered a public administrative contract for a specific type of concession between public and private sectors, not involving transfer of public asset ownership. Public-Private Partnership (PPP) is a contract for the provision of infrastructure services, worth not less than R\$ 20 million, for a contract term ranging from 5 to 35 years. It can be signed between a private company and the federal, state or municipal governments. In the PPPs, the private sector is paid entirely by the government or by a combination of user fares for the services provided plus public resources (Brazilian Federal Government, 2012).

PPPs were introduced in Brazil as an innovative type of concession to complement both the common concession policy instrument, created in 1995 and the traditional contracting out instrument created in 1993. Both of these instruments were introduced

after the 1990 National Program of Destatization (PND), which reduced the role of the State in the provision of public services and transferred the responsibility to the private sector, while the government assumed the role of regulator and supervision. This was aimed at higher efficiency and lower costs in the provision of public services (De Queiroz Pereira, 2006; Pinto et al., 2011). In Brazil, traditional procurement, common concessions and PPPs are different from privatization because they do not involve transfer of asset ownership to the private sector (Alvarenga, 2005; Campos, 2007).

The traditional contracting out law introduced in 1993 (8666 Federal Law) establishes rules and procedures for government purchases and contracting out of public works to the private sector through several modalities, including the competitive bidding process, which is also used for public procurement of PPPs in Brazil. Based on this traditional procurement instrument, the government frequently seeks quotations for the construction of public works and hires the proponent with the lowest project budget for contract execution (Brazilian Federal Court of Accounts, 2010a). On the other hand, the concession instrument created in 1995 (8987 Federal Law) was a step forward in the transfer of responsibility for service provision from the government to the private initiative. Unlike the traditional 8666 Law, in which the government bears complete financial responsibility for capital investment and service provision, the 1995 common concession instrument allows the public sector to transfer commercial and capital investment risks to the private concessionaire because the latter assumes the burden, at its own risk, to invest, implement, operate and maintain public infrastructure (Rossa, 2011). The common concession instrument is used for economically and financially self-sustainable projects, in which the demand for the services is considered enough to remunerate the capital investment of the private sector. Under the common concession, the private sector remuneration is completely obtained from the fares charged to service users, with no contribution of resources from the government. Since 1995, when this instrument was introduced in Brazil, many infrastructure projects have been implemented in sectors such as telecommunications and distribution of electric energy (Fiocca, 2005; M. P. Ribeiro, 2012a).

The instrument of Public-Private Partnerships, created in 2004 (Brazilian federal law. 11079, 2004) is a step ahead of the common concessions. The federal PPP law introduced norms for the public procurement of PPPs in order to attract private financing to projects that could not be implemented under the common concession regime, mainly

because they were not economically and financially self-sustainable. The PPP instrument was introduced to enable the implementation of urban development infrastructure projects that could not be sustained solely from the fares directly charged to users. They were also considered of high risks, which did not attract the interest of the private sector (De Queiroz Pereira, 2006).

In order to make these projects attractive to private participation, in 2004 a concept of PPPs was introduced in Brazil that involves risk-sharing between public and private sectors. The PPP instrument also involves full public sector remuneration for the provision of services, known as administrative PPP concession (*concessao administrativa*); or only to complement fares charged to users, known as sponsored PPP concession (*concessao patrocinada*). To exemplify, while sponsored PPP concessions are better suited for projects that involve construction and operation of highways, metro and sanitation infrastructure, in which users may be charged for the services provided; administrative concessions are suitable for projects in which the public sector is considered the direct user or services, such as in the case of prisons, public hospitals and school. In the latter case, user fares from consumers do not apply, and the government becomes the sole client (De Queiroz Pereira, 2006; Pasin, 2012). The remuneration from the public sector in PPP projects, known as ‘pecuniary payment’, is a risk-sharing mechanism that differentiates PPPs from common concession. It is the main device to attract private financing to non-self-sustainable infrastructure projects (Pasin, 2012). Gouveia et al. (2009) mentions that the Brazilian concept of PPP emphasizes the risk and resource sharing between public and private actors to enable the joint intervention: “PPPs are indicated for projects that, if implemented and operated solely by private enterprise, certainly would not get the desired return, and if depended only on the State, they could never get off the ground” (p. 7). The following table presents the distinction between the different types of policy instruments in Brazil for infrastructure development.



Table 2 - *Typology of Policy Instruments in Brazil for Infrastructure Development*

Type of instrument	Privatization	Traditional public procurement (8666 Law)	Common concession (8987 Law)	PPPs (11079 Law)
Type	Sale	Contract	Contract (self-sustainable projects)	Contract (non-self-sustainable projects)
Objective of contract	Sale of asset	Government purchase of public works or services	Transfer of service provision to the private sector, associated or not with public works	Transfer of public service provision to the private sector, associated or not with public works
Asset ownership	Private	Public	Public (reversion of assets to public sector at the end of contract)	Public (reversion of assets to public sector at the end of contract)
Capital investment	Private (purchase)	Public	Private (if there is construction)	Initially private but compensated by public resources in construction and/or operation stages
Financial Compensation	Private (purchase)	Public sector	Fares only	Public compensation only or in addition to fares
Commercial risk allocation	Private sector	Public Sector	Private Sector	Public and Private sectors (risk sharing)

## **2.3 Historical evolution towards PPPs as policy instruments**

The birth of the PPP concept adopted in Brazil and in this research is usually linked to the Private Finance Initiative (PFI) introduced in the United Kingdom by the Conservative Government in the 1990s. It was announced in a scenario of recession to control fiscal policy, limit public sector spending and increase economic growth, and it was taken forward by the New Labour Government in 1997 (Jane Broadbent & Laughlin, 1999; De Queiroz Pereira, 2006; Entwistle, Bristow, Hines, Donaldson & Martin, 2007; Peci & Sobral, 2006). In the United Kingdom, in Brazil and in many other countries, there was a similar process leading to the introduction of PPPs for private financing of infrastructure projects.

After the Second World War and with the international repercussion of the 1929 Great Depression in the United States, many Western countries tried to bring macroeconomic stability and reconstruction through increased government intervention in the economy, as well as through State production of goods and provision of services to the population. Between 1930s and 1980s, intervention received popular labels such as 'Welfare State', and 'Keynesian State' (Majone, 1997). In Latin America, this period was characterized by military dictatorships and, more specifically in Brazil, by the policy of 'national desenvolvimentism' and import-substitution model, both based on strong State intervention in the economy (Gouveia et al., 2009). Over the years this approach lost international strength in many developed and developing countries. It was criticized for not achieving efficiency in the delivery of services and for substantially increasing the resource and administrative burden on the State, which culminated in the global crisis of the 1980s (Majone, 1997). In Latin America, in particular, there were strong pressures against State monopoly because in the 1980s many faced the end of military dictatorships and experienced a process of democratization. The fiscal crisis of the 1980s was intensified by increased demand from society for better social policies and for the allocation of public resources into services such as health and education, as well as by the need for investment in infrastructure to stimulate economic growth. This period was also characterized by rising unemployment and inflation rates (De Queiroz Pereira, 2006; Gouveia et al., 2009). The economic crisis occurred not only in Latin America, but also in Western developed countries, and highlighted the problems of State monopoly in the provision of infrastructure (Majone, 1997).

As a result, in the 1980s, the international scenario was influenced by neoliberal ideas in response to fiscal problems, aimed at budgetary control and downsizing of public

service provision (Aucoin, 1990). These ideas were mainly associated with the administration of Margaret Thatcher (1979) in the United Kingdom and of Ronald Reagan (1980) in the United States. One of the main neoliberal arguments was that market-oriented policy instruments based on private competition, as alternatives to State monopoly, increased efficiency, reduced costs and decreased the price of service provision (Batley, 1996; Hood, 1991). Neoliberal policy responses involved measures to privatize government operations and to deregulate private economic enterprises (Aucoin, 1990), as well as devolution of activities from central to regional and local governments (Ahmad, Devarajan, Khemani & Shah, 2005; Rondinelli, McCullough & Johnson, 1989; L. Torres & Pina, 2002).

Several countries adopted neoliberal policy instruments involving private participation, such as the United States, Korea, the United Kingdom, Portugal, France, Brazil, Australia, Sweden, New Zealand, and Canada (Kaboolian, 1998). In Brazil, the process of decentralization had an early start in 1967 with the Decree-Law 200 that transferred responsibility for the provision of goods and services to autarkies, foundations, public companies and societies of mixed economy (Silva, 2011; Siqueira, 2012). With the end of military dictatorship and the publication of the 1988 Federal Constitution, the process of decentralization was intensified with devolution of responsibility for service provision from the central government to municipalities (De Queiroz Pereira, 2006). This process was followed by the 1990 National Programme of Destatization (PND), which promoted privatizations (sale of state-owned enterprises to the private sector) that occurred in sectors such as telecommunications, energy and transportation (Alvarenga, 2005; De Queiroz Pereira, 2006).

Considering that privatization became increasingly criticized worldwide, especially in developing countries for failure to deliver effective results in some sectors, other policy instruments, based on competition in the form of contracting out, became increasingly adopted for delivery of infrastructure (Weaver, 2009). These more competitive types of policy instruments are still currently adopted in several countries and are characterized by private parties entering into competitive bidding processes for the construction of infrastructure and/or for the provision of public services on behalf of the public sector, which still maintains ownership of assets (Entwistle et al., 2007; S. Harris, 2004; Teisman & Klijn, 2002). Traditional contracting out, common concessions, and PPPs are examples of these types of policy instruments that followed privatizations with the advent of neoliberal ideas.

## **2.4 Advantages & Criticisms of the PPP policy instrument**

There are many perceived advantages of PPPs as policy instrument for the provision of infrastructure projects, which mainly involve three aspects: funding for infrastructure, innovation and risk transfer (World Bank, 2012b). PPPs are used as private financing for investment in infrastructure services to compensate for public budgetary constraints or to allow greater public investment in other policy priorities. In face of budget constraints, need for re-investment in ageing or poor infrastructure, and growing demand on public sector services, PPPs allow the public sector to avoid up-front capital costs by spreading these costs over the project's lifetime through payments in instalments to the private initiative (Ahadzi & Bowles, 2004; Kwak, Chih & Ibbs, 2009; World Bank, 2012b). It is generally acknowledged that infrastructure is under-funded worldwide, and private participation in such projects is a way of dealing with this 'funding gap' (S. Harris, 2004; M. P. Ribeiro, 2012a; World Bank, 2012b).

Another advantage is greater innovation, efficiency and creativity through the use of private sector managerial and technical skills for the provision of infrastructure services (Ahadzi & Bowles, 2004). It is perceived that through private participation in competitive procurement processes, PPPs provide incentives for bidders to develop innovative solutions that increase the value for public money on infrastructure services, in terms of more-efficient, lower-cost and reliable services (HM Treasury, 2012; Kwak et al., 2009; World Bank, 2012b). It is also argued that the private sector can contribute with project and risk management expertise to assure high quality and shorter delivery time (HM Treasury, 2012). From the perspective of innovation, the term 'value for money' (VfM) does not necessarily mean 'cheaper' provision of services through the PPP instrument in comparison to other policy implementation alternatives; VfM could also be achieved by "spending a little more than a conventionally procured solution but achieving a far superior service as a result" (S. Harris, 2004, p. 10).

Furthermore, PPPs are also perceived to provide advantages in risk sharing and transfer between public and private sectors (HM Treasury, 2012; World Bank, 2012b). It is often argued that Public-Private Partnerships as instrument for infrastructure provision allows the public sector to allocate to the private initiative the risks it can better manage (such as of construction, finance, and operation)-, reducing the project's overall cost to government; while the public sector retain risks it can manage more efficiently, such as

regulation enactments and license approvals (FMI Corporation Locations, 2011; S. Harris, 2004).

There are also criticisms of PPPs for the provision of infrastructure. These include public sectors' lack of knowledge and skills to regulate and control the implementation of long-term PPP projects, limited competition in bidding processes and high costs and difficulties of designing contracts, formulating bids and hiring advisors services (S. Harris, 2004; HM Treasury, 2012; Kwak et al., 2009). Difficulties related to the process of structuring PPP projects are usually emphasized because of the complexity involved in these long-term contracts and the attempts to anticipate possible contingencies (Katz, 2006). There are also criticisms with respect to the design of contracts. It is argued that lack of flexibility creates obstacles for alterations to reflect the public sector's service requirements and that inappropriate risks have been transferred to the private sector resulting in a higher risk premium being charged to the public sector (HM Treasury, 2012). Furthermore, PPPs are also criticized based on the long term commitment of the public sector in projects that restrict governments' flexibility with future expenditures due to fiscal obligations (S. Harris, 2004; World Bank, 2012b). Another criticism includes the perception that the private sector cannot borrow capital as cheaply as the public sector to finance projects, so PPP projects may not necessarily costs less through private financing than via direct government funding (Kwak et al., 2009). Moreover, there are also problems in relation to issues of accountability in terms of insufficient transparency on the returns made by investors, as well as on the future liabilities created by PPP projects to taxpayers (HM Treasury, 2012).

## **2.5 PPPs around the world**

Despite criticisms, Public-Private Partnerships have been continuously used worldwide in the provision of infrastructure services. Based on the database of InfraPPP (online media with updated knowledge on infrastructure and PPPs) (2013), numerous countries are currently involved in different stages of PPPs, from design to contract execution. The United States, Australia and Canada are among the developed countries with the highest number of PPPs in planning or in tender and with projects awarded. Considering developing countries, Brazil is one with the largest number of PPPs under similar statuses (InfraPPP, 2013).

To exemplify the amount of investment flowing worldwide into PPP projects, between 1985 and 2004 in Europe, Asia, and the Far East there were more than one thousand infrastructure PPP projects worth US\$ 450.9 billion of investment in areas such as road, rail, airport, seaport and water (Abdel Aziz, 2007). The United Kingdom has also demonstrated increasing interest in PPPs. In 2001, there were approximately 300 PFI projects signed in the UK, worth £12 billion (Akintoye, Beck, Hardcastle, Chinyio & Asenova, 2001), and as of 2012 there were over 700 PFI closed deals worth around £55 billion (HM Treasury, 2012). Australia has also expanded its pipeline of PPP projects and announced the second phase of an A\$60 billion investment program on road and rail infrastructure (Australian Trade Commission, 2013).

Considering low and middle-income countries, according to the World Bank Private Participation in Infrastructure Database, between 1990 and 2012, there were nearly 3,500 Greenfield projects that reached financial closure (PPI World Bank, 2013). Based on the World Bank's definition, Greenfield projects are the ones that closest resemble the concept of PPPs used in this research, in which a private entity or a public-private joint venture builds and operates a new facility for the period specified in the project contract and then may return to the public sector at the end of the concession period (PPI World Bank, 2013). These projects represent over US\$ 1 billion, in sectors such as transportation (airports, roads, railroads, seaports), energy (electricity and natural gas), telecommunications, water and sewerage (PPI World Bank, 2013). Among developing countries, China has identified PPPs as an innovative tool for financing large infrastructure projects to cope with the increasing urbanization growth (Chan, Lam, Chan, Cheung & Ke, 2010). From 1990 to 2011, there were more than 1,000 infrastructure PPP projects in China worth US\$ 116.4 billion in sectors such as energy, telecom, transport, water and sewerage (Wang, 2013).

## **2.6 PPPs in Brazil**

Considering the need for additional sources to complement the gap for investment in economic and social infrastructure, Brazilian governments at federal, state and municipal levels have also acknowledged that immediate private funding for long-term projects is an important investment alternative. It is in this context that Public-Private Partnerships (PPPs) have become increasingly selected as policy instrument.

The Brazilian government has attempted to increase upfront funding for infrastructure development, but the resources and incentives are not sufficient to meet the

needs. In 2011, the federal government announced the second Growth Acceleration Program (PAC2) for more investment in infrastructure, worth nearly R\$ 950 billion until 2014, in addition to the R\$ 600 billion of the previous program (2007-2010) (Ministry of Planning, 2012). It has also complemented the Growth Program with other instruments to stimulate investment, such as reduction in energy costs, in interest rates and tax burden (Ministry of Finance, 2013; Waltenberg & Bronzatti, 2013). Furthermore, several states and municipalities in Brazil have also obtained additional funding from international banks such as the Inter-American Development Bank (IADB), the World Bank (International Bank for Reconstruction and Development – IBRD) and the *Corporación Andina de Fomento* (CAF), a Latin American development bank, as well as from Brazilian federal banks such as *Banco do Brasil* (Serodio, 2012). However, this has not been enough to meet investment needs for economic and social infrastructure development.

In terms of economic infrastructure, nearly 40 million people or nearly 21% of the Brazilian population do not have access to adequate basic sanitation facilities (World Bank, 2012a). Moreover, the cost of electricity in Brazil is considered high due to the non-sufficient level of public investment in the production and transmission of energy, including natural gas and petroleum refineries. The average price of electricity for the Brazilian industry is more than 130% higher than in countries in similar stages of economic development such as Russia, India, China and South Africa (BRIC countries) (FIRJAN, 2011).

Moreover, the country needs massive investment in transportation infrastructure such as highways, railways and ports. Their precarious conditions decrease the national and international competitiveness of Brazilian industries. For example, railways have been abandoned for five decades and the unprepared situation of ports and airports and the poorly maintained conditions of highways compromise the efficiency and economic growth of a country that is a commodities exporter (Donato, 2013; A. Torres, 2013). Furthermore, based on the Global Competitiveness Report by the World Economic Forum, Brazil ranked low in the 107th position among 144 countries that were assessed for infrastructure quality. Experts also argue that the difficulties Brazilian industries face with high transportation and energy costs have a negative impact on the country's economic growth, in terms of job creation and productivity (D'Andrade, 2013; FIESP, 2013; Gallas, 2006). Considering these bottlenecks, the Brazilian government has accounted that the need for investment in energy, telecommunications, basic sanitation, transportation and logistics is approximately R\$ 922 billion for the period between 2011 and 2015 (Mantega, 2013).

Furthermore, Brazil has a great need for investment in urban mobility to solve problems associated with an excessive number of vehicles on the streets leading to traffic congestions, with deficit of public transportation and expensive fare prices. In 2013, these problems mobilized numerous protests by the Brazilian population in all state capitals and many other municipalities. The federal government has allocated over R\$ 20 billion of the Growth Acceleration Program to urban mobility, including for the improvement of public transportation infrastructure, construction of metro lines, Light Rail Transit (LRT) and bus lanes (G1 Brasil, 2012; Ministry of Cities, 2012).

Considering social infrastructure, according to the Brazilian Institute for Applied Economic Research (IPEA - *Instituto de Pesquisa Econômica Aplicada*), as of May 2013 the housing deficit in Brazil had reached over 5 million dwellings (Furtado, Lima Neto & Krause, 2013). Moreover, in the health sector, there is a deficit of nearly 2000 hospitals and an estimated need of R\$ 118 billion in public investment for the construction of these facilities (Bitencourt, 2013). The government has also acknowledged the need for more investment in security infrastructure, especially considering the overcrowding of Brazilian prisons, where there are approximately 300 thousands places for more than 500 thousand inmates (Oliveira, 2013).

Considering the need to complement public investment in infrastructure development, Brazilian governments have increasingly selected the PPP instrument to obtain up-front private financing. Nevertheless, the 50 projects that have reached PPP contract signature are still a small number for the country's need in infrastructure development (Enei & Mundim, 2013), and considering that almost 10 years have already passed since the publication of the 2004 Brazilian federal law which introduced PPPs a policy instrument (Law n. 11079, 2004). At the federal level, only one PPP contract has been signed, which is the 15-year concession for the construction, operation and management of the digital Datacenter complex for two government-owned financial institutions, Caixa Economica Federal and Banco do Brasil (F&I, 2013). At the state level, there are only 18 contracts signed and five of them refer to construction, operation and management of football stadiums for the 2014 World Cup (states of Ceara, Bahia, Pernambuco, Rio Grande do Norte and Minas Gerais) (Dias, 2013; Pereira, 2013). Most of the PPPs signed so far in Brazil are at the municipal level, represented by approximately 30 contracts (Enei & Mundim, 2013). However, this number is still substantially small considering that in Brazil there are over 5,500 municipalities.



In the attempt to get additional PPP projects off the ground, governments in Brazil have adopted an approach for the design of such projects that transfer costs for PPP project formulation to the private sector, which is called the Procedure for Request of Interest (PRI). Nevertheless, the application of this mechanism has not been able to support many cases of PPP formulation beyond the pre-tendering stage. The PRI mechanism is discussed next.

## **2.7 The formulation of PPP projects in Brazil: the Procedure for Request of Interest (PRI)**

Two aspects will be discussed in this section to introduce the use of the PRI mechanism for the formulation of PPP projects in Brazil: (1) the pre-tendering stage; and (2) the complexity of the process.

### **2.7.1 The pre-tendering stage of PPP project formulation**

The Brazilian Federal Constitution determines that the procurement of public works and services by the government must be preceded by an official tendering process (article 37, item XXI, Brazilian Federal Constitution, 1988). The tendering process is aimed at assuring equal opportunity of participation to all interested parties and the participation of the highest number of competitors in the procurement of public works and services (Brazilian Federal Court of Accounts, 2010a). According to the Brazilian legislation, a tendering process is intended to ensure the compliance with the constitutional principle of equality, the selection of the most advantageous proposal for the administration and the promotion of sustainable national development, and it will be processed and judged in strict accordance with the basic principles of legality, impersonality, morality, equality, advertising, [and] administrative probity (article 3, Law n. 8666, 1993, own translation).

As detailed in the Brazilian federal PPP Law, the hiring of private concessionaires for the provision of infrastructure PPP projects must be preceded by a competitive tendering process in accordance with the procedures of the traditional tendering law, n. 8666 of 1993 (article 10, Law n. 11079, 2004). The process of PPP project design takes place in the pre-tendering stage or internal phase, which is prior to the official bidding process and to the PPP contract signature. The aim of the pre-tendering stage is the elaboration of projects to be used in the external phase, which corresponds to the competitive tendering process for the selection of a private concessionaire to implement the PPP project. Based

on the Brazilian federal PPP law, the dividing line between the internal and external phases is represented by the Public Consultation. This is a period of 30 days in which the PPP project is publicized to society for comments and suggestions in accordance with the principle of publicity of the Brazilian Federal Constitution (article 10, item VI, Law n. 11079, 2004). According to the PPP Law, the Public Consultation period marks the end of the pre-tendering stage, accompanied by publication of the final PPP project online and in newspapers of large circulation (local, state and national), as well as the publication in the Federal, State or Municipal Diary, depending on the level of the PPP project (article 10).

In Brazil, there are two options for the elaboration of Public-Private Partnership projects: the traditional approach and the Procedure for Request of Interest (PRI) (Pereira, 2011b; Schiefler, 2012). States and municipalities are increasingly opting for the PRI mechanism over the traditional approach due to its perceived advantages and to the challenges of using the traditional mechanism.

Under the traditional approach, the public sector is officially in charge of elaborating the PPP project, including tendering protocol and contract drafts. In this case, the government specifies the type of infrastructure service or intervention and prepares the PPP project either using its internal capacity of civil servants or by hiring project structuring services offered by external consultants and organizations, such as the Brazilian Development Bank (BNDES) and the Brazilian Project Company (EBP) (Pereira, 2011b; M. P. Ribeiro, 2012a). Based on the traditional approach, the public sector pays for the project design, publishes it for Public Consultation as required by the PPP Law and organizes the Public Audience event, as required by Brazilian tendering norms (article 39, Law n. 8666, 1993). Public Audience is one of the mechanisms of public participation and control which must be organized prior to any official tendering process for direct access to the opinions of interested parties on the project (Soares, 2002). After that, the government launches a tendering protocol inviting interested private parties to submit proposals for the implementation of the project.

The traditional alternative in which the public sector pays for the formulation of PPP projects faces difficult challenges in Brazil. As M. P. Ribeiro (2012a) explains, the public sector, especially at the state and municipal levels, does not have the human and organizational capacity, based on training and experience, to prepare the sophisticated and complex projects required for concessions and PPPs, or even to arrange the processes for hiring external consultants to do so. In order to rely on its own civil servants for the

elaboration of PPP projects, the public sector must have capable human resources available to design complex studies required for the structuring of such projects. Alternatively, the government may also choose to hire external consultants or organizations, which requires public resources in order to pay for these services. However, the public sector usually does not have the budgetary flexibility to allocate resources for the elaboration of expensive PPP projects (Pereira, 2011b; M. P. Ribeiro, 2012a). Moreover, to outsource this responsibility, the public sector must follow contracting out procedures for hiring services, in accordance with the traditional tendering law (Law n. 8666, 1993). However, the tendering process is often bureaucratic and time consuming and selects lowest priced bids by external consultancies that often lack qualification to carry out the elaboration of complex PPP projects (Pereira, 2011b; M. P. Ribeiro, 2012a).

In contrast, the public sector may opt to use the Procedure for Request of Interest (PRI), which has been increasingly selected by states and municipalities in Brazil for the pre-tendering elaboration of PPP projects (Pereira, 2013; Pereira et al., 2012). The PRI mechanism was introduced by the common concession law and is also allowed for the formulation of these types of projects (article 21, Law n. 8987, 1995). However, in practice, it is mainly adopted for the design of PPPs, and sub-utilized for the formulation of common concessions (Loureiro, 2012b; T. Ribeiro, 2012b).

Based on the PRI mechanism, the public sector invites private parties to manifest interest in formulating studies, surveys or investigations to be used in PPP projects, at their own risk, with no reimbursement from the government. The reimbursement obligation is transferred to the winner of the tendering process, which must repay the agency that designed the PPP project in the PRI pre-tendering stage. Experts and officials in Brazil often mention that the main advantage of the Procedure for Request of Interest for the public sector is the fact that the private initiative pays for the elaboration of complex and expensive PPP projects (Guimarães Neto & Batista, 2010; Loureiro, 2012b; Pereira, 2011b; PPP Unit - State Government of Minas Gerais, 2010; Schiefler, 2012).

In the PRI mechanism, the interactions between public and private actors take place in the pre-tendering stage, prior to Public Consultation, which is different from the traditional approach. These interactions represent informal arrangements since no formal contract binds public and private actors in the PRI process of PPP project formulation. Although a formal contracting out relation must be established between the parties for the

execution of a PPP project, the PRI pre-tendering stage is characterized by intense informal interactions between stakeholders.

For both the traditional approach and the Procedure for Request of Interest (PRI), the phases after Public Consultation follow the same procedures. Figure 1 next shows that the main differences between the two approaches take place at the pre-tendering stage (phase 1 of PPP project design). On one hand, under the traditional approach, PPPs resemble the BFOT format of partnerships, in which the private sector is not responsible for designing the PPP project, but for building, financing, operating and transferring back the facility to the public sector at the end of the PPP contract. On the other hand, under the PRI mechanism, the private sector is also responsible for designing the PPP project, and PPPs in this scenario resemble the DBFOT format of design, build, finance, operate and transfer.

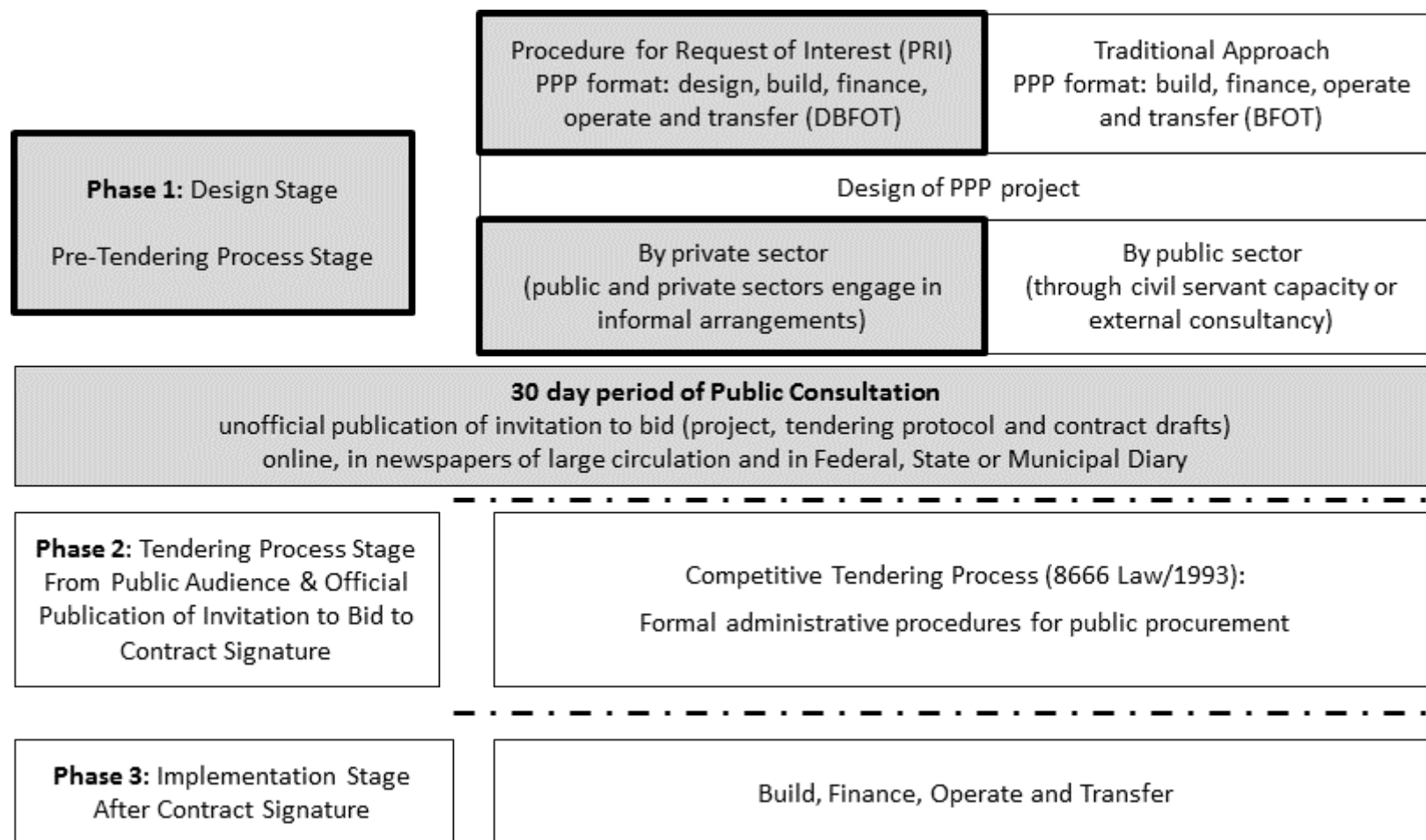


Figure 1 - Phases of PPPs in Brazil: from design to implementation

### **2.7.2 Complexity of the PRI pre-tendering process**

The PRI arrangement in the pre-tendering stage is complex and highly dependent on interactions and relations between key stakeholders prior to Public Consultation. There are two aspects that influence the complexity of these arrangements. One element is directly related to the informal character of PRI pre-tendering processes, since there is no formal contract that legally binds public and private actors to the process. Although there is a formal Procedure for Request of Interest publication and authorization that allows the private party to prepare the PPP studies, actors are not formally obliged (in contract or by law) to carry on the preparation of the studies. The public and private sector are allowed to cancel and stop the preparation process at any time. Another influential element is the concept of 'project finance' embedded in the Brazilian PPP legal framework, because it requires the involvement of several stakeholders for the elaboration of PPP projects, as discussed next.

The requirement for the involvement of a high number of actors in the preparation of PPP projects is linked to the concept of project finance embedded in the Federal PPP Law of 2004. For this discussion, it is important to first define the concept of project finance, which is a financing technique for projects that requires large capital and operational investments such as in the case of infrastructure PPP projects. This is a method in which the project is 'self-financing' because the repayment of loans obtained with financial institutions depends on the project's cash flows (Borges & Faria, 2002). Private companies usually rely on this technique as alternative to corporate lending, either when the companies are already highly indebted and have difficulties to obtain new loans, or as a way to prevent a company from using up all of its corporate borrowing capacity for a single project, allowing it to participate in several projects at the same time (Enei, 2007).

In project finance, private companies become sponsors of a newly created Special Purpose Company (SPC) that borrows from financial institutions and implements the project. The SPC must be created for a single purpose, which is the specific object of the PPP contract, and any loans obtained through the SPC must be used exclusively as investment in that project. Sponsors usually inject 30-20% equity capital in the SPC, and the remaining 70-80% comes from debt capital obtained from financiers. In Brazil, the SPC is a limited liability company because, in case of default in loan payment, financiers have limited claims on the loan and do not have recourse to the assets of the sponsor company as in corporate finance. This is one of the main aspects that influence the risky character of

project finance interventions such as PPPs. The recourse of lenders is limited to other types of guarantees (i.e. bridge loans or a letter of credit) offered by private sponsors during the construction phase of capital investment, when the project is yet to generate revenue for the loan service (Borges & Faria, 2002). Depending on the completion of the construction phase, financiers may reduce requirements of limited guarantee for the remaining phases of the project and accept the project's cash flow and assets as the only claims on the loans, making the project 'self-financing' (Giribola, 2013).

In the case of Brazil, the PPP legislation implies the need for a project finance arrangement for the formulation of a PPP (Enei, 2007). This is mainly based on the legal requirement for the establishment of a project company or Special Purpose Company (SPC) for the delivery of the PPP service (article 9, Law n. 11079, 2004). These aspects introduce a high level of complexity in the pre-tendering formulation of PPP projects.

The Brazilian PPP legislation requires the winner of the competitive tendering process to constitute an SPC, which is the entity that signs a PPP contract with the public sector for the implementation of the infrastructure project (article 9, Law n. 11079, 2004). Since the SPC is a brand new entity and has no credit history, in order for the private sponsor to obtain resources from financial institutions to invest in the PPP project, they cannot use the SPC's balance sheet or rely on its credit background, which are non-existent. Instead, the private sector must rely on the strength of the PPP project itself, demonstrating to financiers that its cash flow has the capacity to earn enough return for the repayment of loans and that the project's risks have been allocated by a well-designed network of contracts (Enei, 2007). Sponsors must have capacity to negotiate financial arrangements and also demonstrate to financiers their know-how in the sector of the project, and their ability to design, implement and manage the project (De Araújo, 2005). Since based on project finance principles the decision of lenders to provide financing rests on the perceived success and feasibility of the PPP project for which the SPC was specifically created, the PRI pre-tendering process must deliver a PPP project that is technically coherent, well-integrated and based on solid premises to reduce financiers' perceptions of default risk from the SPC (Chengwing, 2008). This is where it can be made the link between project finance and the high number of actors for the formulation of PPP projects.

To formulate a PPP based on the concept of project finance substantially increases the complexity of the application of the PRI mechanism in practice, because it requires the elaboration by different stakeholders of a variety of studies, which must be interconnected

and coherent. For the PPP project, it is necessary to prepare technical, financial, economic, environmental and legal feasibility analyses, engineering studies, market analysis, and demand projections to obtain, among other aspects, (i) consistent estimates of the investments required over the PPP concession period, (ii) the operational arrangement of the services and (iii) the expected revenue. The formulation of the PPP project also requires an analysis for the identification of risks that must be accounted during the contract execution and successfully allocated through a network of contracts. In the PRI pre-tendering stage, parties must also use this information to prepare the tendering and contract drafts to support a future tendering process (R. Torres & Aroeira, 2010). These elements are essential for negotiations with financial institutions in order to obtain capital finance for the PPP project.

The elaboration of many feasibility studies and analyses, the decisions on project details and the construction of the network of contracts are negotiated between various actors during the pre-tendering stage. The macro-interdependencies between the public and private sector in the formulation of a PPP project reflect in practice various micro interactions in the pre-tendering process, often involving entities from the public sector (Secretaries, politicians, officials, civil servants, etc.), private actors (investors, consultants, advisors, etc.) and society. Based on the legal requirements of the Brazilian legislation, the participation of society during the pre-tendering stage is exerted through Public Consultation, and its involvement in dynamic interactions is context specific, depending on the PPP formulation case.

Several stakeholders from public and private sectors are involved in PRI pre-tendering processes. From the private sector, investors are important to guarantee resources for the formulation of PPP projects during the design stage, since the investment is made at the private sector's own risk. Interactions with financiers also take place, considering that they are responsible for supporting the infrastructure investment during future project execution, by offering the short and/or long term debt part of the capital structure for the implementation of the project. The input of builders is important because of their participation in the construction of public infrastructure, and they are sometimes also interested in operating public services. Service providers are essential stakeholders in the formulation of PPP projects in Brazil, because for a project to legally qualify as PPP, it must be designed around the provision of public services (i.e. operation and maintenance of infrastructure). Insurance companies may also participate in the process of PPP design



for negotiations over risk coverage. Financial advisors prepare the appropriate mix of capital (long term loans, short term debt such as bridge loans, and equity investment) to be included in project models for loan negotiation with financiers. Legal advisors are responsible for elaborating contracts that include the network of arrangements negotiated during the pre-tendering stage, as well as for designing the tendering protocol for the bidding process. They are also necessary due to the Brazilian legal framework and project finance principles, which are heavily dependent on formal contracts and legal procedures.

As for the public sector, there is the participation of stakeholders in several organizational levels and in several roles. As executor, it involves the head of the Executive and the Sectoral Secretariat for the specific infrastructure scope of the PPP. There are also members of PPP Units and Managing Councils, involving civil servants and Secretaries who are expected to participate in the pre-tendering process. As legislator, it includes elected officials who are responsible for elaborating and approving laws related to the PPP intervention. Public actors also participate as planners, solicitors, property owners, regulators and resource collectors. The role of Finance Minister or Secretaries is also important in assessing the project for its fiscal responsibility and for the financial capacity of the government budget to meet the pecuniary payment commitment with the project. Prosecutors at the federal, state and municipal levels (public sector attorneys) also participated in the assessment of PPP contracts and tendering protocols prior to Public Consultation and tendering processes. There are also external control bodies of the public administration that supervise public spending, which are represented, for example, by the Public Ministry, the federal and state Courts of Accounts and its civil servants.

### **2.7.3 Summary of section**

The pre-tendering formulation of PPP projects based on Procedure for Request of Interest (PRI) mechanism is a complex process based on informal interactions since there is no formal contract that legally binds public and private actors to the process, and on the involvement of several stakeholders for the elaboration of PPP projects, which is a consequence of the project finance concept embedded in the PPP legislation. The Procedure for Request of Interest in Brazil has been increasingly selected for the elaboration of PPP projects because of its perceived benefits. However, many cases have failed or not yet completed the pre-tendering phase of project design. There is evidence that the four elements of the PPP Framework used to guide many PRI cases of PPP formulation in Brazil have not been sufficient to lead them towards Public Consultation.

Next section discusses these elements to provide a better understanding of the problem explored in this research, which is the fact that many cases of PPP formulation have not been able to reach completion of the PRI pre-tendering stage.

## **2.8 The elements of the Brazil PPP Framework for PRI pre-tendering formulation of PPPs**

Four main elements characterize the Brazil PPP Framework for PRI pre-tendering processes: policy, legal, organizational and strategic. In Brazil, it is considered that most PRI cases have failed or not yet completed pre-tendering processes because they have lacked a combination of these aspects (Pereira, 2012b, 2013). Although substantial attention has been placed on implementing and strengthening this Framework, many cases that have been guided by its elements have not completed the pre-tendering process.

### **2.8.1 Policy framework: PPP as priority instrument in specific infrastructure sectors**

In Brazil, public sector expression of willingness to get involved in specific policy initiatives involving the PPP instrument is considered an important element for the PRI pre-tendering stage (Goulart, 2012; R. Monteiro, 2013; Pinheiro, 2011; M. P. Ribeiro, 2012a; Simionato, 2013). Recently, several states in Brazil have also legally adopted the alternative where the private sector can suggest areas and projects to be developed through the PPP instrument; however, this option initiated with the Sao Paulo PRI Decree is still incipient (Decree n. 57289, 2011). Although there is the perception that expressing interest in the PPP instrument and indicating priority policy areas for PPP projects is an important stimulus, many cases that have fulfilled these aspects have not yet completed the pre-tendering process.

In Brazil, the public sector has demonstrated political will, interest and commitment for the formulation of PPP projects in specific sectors of infrastructure. The political will of the government is expressed through its attempt at improving the regulatory, economic, fiscal and financial circumstances to stimulate private interest in the design and implementation of PPP projects. Nevertheless, although certain sectors have been set as priority for PPP projects in several cases of PRI pre-tendering processes, many are still struggling to complete the preparation stage. With specific reference to Brazilian states, which is the only level where consistent information on PRIs is available, the

following table shows the number of incomplete cases that initiated PRI tendering procedures between 2011 and 2012, but have not yet completed the process (Pereira et al., 2012). In fact, the report emphasizes the limited availability and transparency of information on PPPs at the federal, state and municipal levels and the difficulty in obtaining documents and public information regarding Procedures for Request of Interest (Pereira et al., 2012).

Table 3 next shows that most incomplete PRI processes are in the sector of urban mobility, including train, metro and parking lots. There are also cases in the sectors of logistics, basic sanitation, health and security. The column labelled 'others' include projects in a variety of sectors: 4 projects related to government facility infrastructure such as administrative centres, 2 in citizen services, 1 related to tourism infrastructure for the construction of a cultural complex, and 1 in education.

Table 3 - *Procedures for Request of Interest (PRIs) - state level*<sup>1</sup>

States	Total of PRIs published 2011 & 2012	PRIs 2011	PRIs 2012	Infrastructure sector of incomplete PRIs					Incomplete PRIs	
				Logistics	Urban Mobility	Basic Sanitation	Health	Security	other	2011-12: 39 PRIs 2010: 2 PRIs:
<b>Total n. of PRIs</b>	<b>65</b>	<b>26</b>	<b>39</b>	<b>7</b>	<b>10</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>8</b>	<b>41</b>
<b>Ceara</b>	12	10	2	2	1			2	1	6
<b>Rio de Janeiro</b>	6	0	6		1	1	1		1	4
<b>Distrito Federal</b>	7	5	2		2	1				3
<b>Sao Paulo</b>	9	2	7		1		1	1	1	4
<b>Minas Gerais</b>	4	1	3	2	1	1			1	5 (one 2010 PRI)
<b>Pernambuco</b>	4	2	2	3					1	4
<b>Rio Grande do Sul</b>	2	1	1							0
<b>Mato Grosso</b>	4	0	4				2	1		3
<b>Bahia</b>	1	1	0							0
<b>Espirito Santo</b>	2	1	1			1			1	2 (one 2010 PRI)
<b>Alagoas</b>	3	0	3		1			1	1	3
<b>Goias</b>	2	1	1					1		1
<b>Rondonia</b>	2	0	2				1			1
<b>Santa Catarina</b>	2	1	1		1				1	2
<b>Parana</b>	4	1	3		2		1			3
<b>Rio Grande do Norte</b>	1	0	1							0

<sup>1</sup> Note. Adapted from Pereira, B. R., Vilella, M., & Salgado, V. (2012). *Procedimento de Manifestação de Interesse nos Estados: Relatório sobre projetos de PPP em fase de estruturação via PMI* [Procedure for Request of Interest in the states: Report on PPP projects currently being formulated via PRI]. São Paulo, Brazil: PPPBrasil - O Observatório das Parcerias Público-Privadas. Adapted with permission.

Table 3 shows that most PRI cases that have not yet finished PRI pre-tendering processes are in the urban mobility sector. These PRIs are struggling to complete the process despite the stimulus provided by the urban mobility aspect of the Growth Acceleration Program (PAC) launched in 2011 with a focus on projects related to collective transportation (Portal Brasil, 2011). The stimulus gained greater support when the federal government reinforced the commitment and announced the National Policy for Urban Mobility in 2012, to improve the accessibility and mobility of people in municipalities (Law n. 12587, 2012). The impulse for PRIs in this sector was also reinforced when the federal government announced in April 2012 an increase in investment level, making R\$ 32 billion available to 18 states and 51 municipalities, for the construction of metro lines, Light Rail Transit (LRT) and bus lanes in cities with more than 700,000 inhabitants (G1 Brasil, 2012; Ministry of Cities, 2012). For projects in this sector, PPPs have been indicated by federal and state governments as the preferable instrument of policy delivery (Carnaúba, 2013). Nevertheless, as the table shows, eight states are still struggling to complete PRI pre-tendering processes even though these cases are in a priority sector for PPP projects. For example, the PRI for the Metro Line 3 was published by the state of Rio de Janeiro in June 2012, and it has not yet completed pre-tendering processes (Pereira et al., 2012; State Government of Rio de Janeiro, 2012).

The sector of logistics is also priority for PPP projects, but as the previous table shows several cases have not yet completed the PRI pre-tendering stage. The president of Brazil, Dilma Rousseff, announced the importance of PPPs for delivery of logistics infrastructure and said that the Brazilian government recognized partnerships with the private sector as essential to continued and accelerated growth. She mentioned the government was engaging in partnership to expand the country's infrastructure, to benefit its population and the private sector, to pay off a debt of decades of delay in investment in logistics, and, above all, to ensure the lowest logistics cost possible without monopolies (Casa Civil, 2012, own translation).

These processes obtained greater support and attention after the federal government launched in 2012 the Logistics Investment Program, providing R\$ 133 billion for logistics investment in highways and railroads (Casa Civil, 2012). However, three states that have engaged in at least two PRIs of logistics have not yet completed the process. Minas Gerais, for example, published a logistics PRI in 2008, which has not yet reached Public Consultation (Quelotti, 2010).

Basic sanitation is another sector in which PPPs have been set as priority for policy implementation; but many cases have struggled to complete pre-tendering processes. In Brazil, this sector has received particular attention and incentives, especially considering the National Policy of Sanitation (Law n. 11445, 2007) and the National Policy of Solid Waste (Law n. 12305, 2010). Both determine national guidelines in sanitation and management of solid waste and urban cleaning, as well as targets and planned actions to be taken by federal, state and municipal governments. For example, by August 2014 municipalities must implement alternatives to replace non-sustainable garbage dumps by sanitary landfills of solid waste (PricewaterhouseCoopers, 2011). In face of this requirement, PPPs have become a preferable alternative for policy implementation, and many states and municipalities adopted PRIs for the formulation of PPP sanitation projects. However, despite this, many basic sanitation PPPs at the state and municipal level failed or have still not completed the pre-tendering stage. Four PRIs at state level, as Table 3 shows, and numerous others at municipal level have not been able to complete pre-tendering processes (Pereira et al., 2012).

Furthermore, PPPs in social infrastructure, such as health and security sectors, have also been prioritized. The states which have engaged in health PRIs have clear PPP frameworks and great incentive for the process, resulting from the positive evaluation and repercussion of the first Brazilian PPP of a public hospital in the state of Bahia, which started service operations in 2010 (Figueiredo, 2012; Kroehn, 2012; Loureiro, 2012a). As for the security sector, all the states with incomplete PRIs in this sector introduced PPPs as preferable policy instrument in security after the state of Minas Gerais signed a PPP contract for a prison complex in 2011 (Quelotti, 2013). However, there are 12 PRIs in social infrastructure that have not completed pre-tendering processes: 6 state PRIs in the health sector and 6 in the area of public security (Pereira et al., 2012).

### **2.8.2 Legal and regulatory framework: legal rules and conditions**

In the context of Brazil, the PPP Framework also includes legal rules and conditions based on laws and decrees which set the criteria and conditions for the design of PPP projects during pre-tendering stage. There are arguments in Brazil that clear PPP legal frameworks facilitate the process of formulating PPP projects, leading to Public Consultation and to implementation (BRAiN, 2011; Miquelino, 2012). However, most cases that are struggling to complete PRI pre-tendering processes already had legal rules and conditions prior to the process.

The legislation on PPPs in Brazil provides the formal basis for the elaboration of PPP projects in terms of conditions for the tendering process and contractual clauses that must be considered in the technical and legal design of a PPP project. This formal approach for guiding PRI pre-tendering processes in Brazil receives the influence from the bureaucratic model of public administration introduced in the 1930s during the period of State monopoly (Silva, 2011).

The bureaucratic model of hierarchies, rules and regulations was dominant during the period of strong State intervention from the 1930s until the 1980s, before neoliberal ideas and managerial principles were introduced, but still continued to influence the public administration in Brazil afterwards. The bureaucratic model adopts a linear thinking approach based on the use of procedural and hierarchical structures and rigid contractual clauses for organizing PRI processes. It assumes that this approach can be replicated to other cases, based on the idea that if it works in one environment, the approach can be applied successfully in other similar environments (Haynes, 2003). Therefore, it introduces context-independency for the organization of PRI pre-tendering processes by focusing on ex ante contractual conditions and standardization of processes and procedures, on the basis of one-system-fits-all-cases (Demir & Nyhan, 2008; Haynes, 2003).

The PPP Laws at the federal, state and municipal levels determine very similar aspects, considering that the federal law is a direct influence on the format of the other PPP Laws in Brazil. They determine legal criteria for a PPP project and, among many aspects, they describe the types of projects that qualify under PPP, such as contract value above R\$ 20 million and contract period between 5 and 35 years (i.e. articles 2 of federal PPP Law). PPP Laws also determine the various clauses that must be included in a PPP contract with respect, for example, to allocation of risks between public and private sectors (i.e. articles 5-7) and the types of guarantees that can be provided by the public sector in support of the pecuniary payment (i.e. article 8) (Law n. 11079, 2004).

Other rules and conditions for PRI pre-tendering formulation of PPP projects are the following guidelines in article 4 of the federal law: “I - efficiency in carrying out tasks of the State and employment of society’s resources; II – respect for the interests and rights of users of services and for the interests of private entities in charge of executing them; III – non transference of regulatory and judicial functions and of exercise of police power, as well as other activities exclusive of the State; IV- fiscal responsibility in the celebration and execution of partnerships; V – objective division of risks between the parties; VI –

transparency of procedures and in decisions; and VIII- financial sustainability and socioeconomic advantages in partnership projects” (Law n. 11079, 2004).

In summary, three main rules and conditions for PRI pre-tendering process of PPP formulation are included in most PPP Laws:

1. Fiscal responsibility;
2. ‘Value for money’ (financial accountability)
3. Transparency and social accountability.

The federal PPP Law determines that the studies of the PPP must demonstrate the project’s fiscal responsibility. For this, it must be considered the annual and multiannual fiscal impact of the PPP contract value on the public budget. The assessment of fiscal responsibility must also evaluate the impact of the government commitment with pecuniary payment and its respective guarantees (article 10, Law n. 11079, 2004). The public entity responsible for managing government budgets, usually the Finance Ministry at federal level or Secretariats at state and municipal levels, must write an official opinion assessing the PPP project’s adequacy with these requirements and expressing whether pecuniary payment commitments are compatible with the federal law of budgetary directives and with the law of annual budget. The official opinion is a requirement for the completion of the PRI pre-tendering stage.

With respect to ‘value for money’, the federal PPP law also determines that the completion of the PRI pre-tendering process depends on the preparation of a technical study that demonstrates the appropriateness and convenience of the procurement, upon identification of the reasons justifying the choice for the instrument of public-private partnership (article 10, item I, a, Law n. 11079, 2004, own translation). The ‘value for money’ is a demonstration of the PPP project’s cost-effectiveness and comparative advantage with respect to other tools available (i.e. traditional tendering and common concession). It must demonstrate that it is cheaper and more efficient to execute the scope of the policy via the PPP instrument than through other policy delivery tools. This demonstration must also account for an ‘objective’ allocation of risks between the parties, which must be included in the terms of the PPP contract (articles 4 and 5, Law n. 11079, 2004). The expectation of the legislation is to assure financial accountability and secure evidence of the private sector’s efficiency in carrying out tasks of the State and employment of society’s resources, as well as evidence of the project’s financial



sustainability and its socioeconomic advantages (article 4, Law n. 11079, 2004). On the other hand, the federal PPP law does not detail the format of the 'value for money' document, which only in some cases is explained in manuals of best practices published by the public sector. The format and methodology of the 'value for money' assessment is often at private sector discretion.

Another rule of the PPP legislation is related to the social accountability and transparency of the process. In article 10, the federal PPP law requires the publication of PPP project technical studies (including tendering protocol and contract drafts) for a 30-day period of Public Consultation, in online media, in newspapers of large circulation and in Federal, State or Municipal Official Diary. These publications must include: the justification for PPP procurement, the identification of the object or scope of the contract, the duration of the contract term and its estimated value, usually represented by the financial commitment of the public sector in terms of pecuniary payment (article 10, Law n. 11079, 2004).

The legal and procedural steering principles discussed in this section have been adopted by all of the states in Brazil which have engaged in at least one PRI pre-tendering arrangement, but are still struggling to complete the process. In Brazil, state and municipal PPP laws are almost a copy of the federal PPP Law. The federal PPP Law was published in 2004, followed by the publication of PPP laws in several states. Subsequently to the federal publication, various municipalities also used the federal or state laws as models for their own PPP municipal legislations. Although municipalities and states have adopted similar legal rules and procedures for the formulation of PPPs projects; they are facing difficulties to complete pre-tendering processes. Considering the state level, for example, most state PPP legislations were published between 2003 and 2009, several years before their main engagement in PRI publications between 2011 and 2012 (PPP Brasil, 2012). When states engaged in the PRI pre-tendering processes, they had already been consolidating their legal PPP frameworks. For example, the states of Ceara and Sao Paulo, which have published the highest number of PRIs in Brazil, are currently struggling to complete several PRI pre-tendering processes of PPP, as shows in Table 3 (Pereira, 2013; Pereira et al., 2012).

### **2.8.3 Organizational framework: organizational and human capacity**

Another element of the Brazil PPP Framework includes the roles of organizations in the public sector, as well as the capacity building of civil servants to conduct the

elaboration of PPP projects. The bureaucratic model of public administration also influences the organizational approach of the framework, which assumes that for the formulation of PPP projects well-qualified ('neutrally competent') actors can apply a set of clear and formal laws and hierarchically controlled administrative procedures. These are assumed to be mainly concerned about carrying out their assignments and following legislative intentions (Demir & Nyhan, 2008; Evans, 1989; Figueiredo, 2012; Greiling, 2006). The organizational framework in Brazil is represented by the internal control of Managing Councils and PPP Unit teams in the public sector, by external control bodies, and by trainings and seminars to build the capacity of civil servants.

The organizational inputs in the framework are directly linked to the PPP Law, which determines not only the legal criteria that must be considered in the pre-tendering formulation of a PPP project, but also the public bodies for managing and controlling the process of design and implementation of PPP projects. This is aimed at evaluating the legal adequacy and 'value for money' of the final projects prepared for publication in Public Consultation and official tendering competition.

These inputs include Managing Councils (or Committees) and PPP Units (or Technical Groups), which are formally created by PPP Decrees and represent internal bodies of management and control within the public sector. In Brazil, state and municipal PPP Decrees have a similar format to the federal decree (Decree n. 5385, 2005). PPP Decrees determine the Ministries (federal level) or Secretaries (state and municipal level) that are members of Managing Councils and the frequency of their meetings. According to the decrees, the Managing Council is usually responsible for defining the priority services for execution under the PPP instrument, for the opening of PRI pre-tendering processes, for assessing the legal, fiscal and technical quality of the PPP project, and for authorizing or not the publication of the final project and tendering protocol for Public Consultation and official tendering process. The legal role of the PPP Units is to provide technical support for the Managing Council, including during PRI pre-tendering processes, and the members of these Units are officially determined through the publication of administrative measures (another formal act used in the Brazilian legal system for nominations). PPP Decrees also determine the role of the sectoral body responsible for the PPP project (i.e. Ministry or Secretariat of Infrastructure, Transportation, Health, Education, etc.), which are temporary members of the Managing Council and share the other members' attributions during the elaboration and execution of the specific PPP projects (Decree n. 28844, 2006; Decree n.

29801, 2009). PPP Decrees also mention the role of the 'expenditure authorizer' ('ordenador de despesas'), which is usually represented by Finance Secretaries. They authorize or not the investment of public resources in PPP projects by assessing the fiscal capacity of the public budget to assume a commitment with the PPP contract value (above R\$ 20 million) and contract period (up to 35 years).

While Managing Councils, PPP Units and the 'expenditure authorizer' represent internal control bodies over the formulation process, there is also a role for external control bodies in the Brazil PPP Framework. They are responsible for evaluating whether PPP projects elaborated during the PRI pre-tendering stage are in accordance with legal conditions and guidelines of transparency, social accountability, and fiscal and financial responsibility, as previously discussed. The role of control bodies also reflects the influence of bureaucracies and hierarchical instruments of accountability present in the Brazilian public sector (Denhardt & Denhardt, 2000; Mafra, 2005; Silva, 2011). According to Dutra (2006), the PPP Law embodies two types of control: internal control from inside the State administrative structure – i.e. Managing Councils and PPP Units –, and external control by bodies that are not within the administrative structure of the State. External control must be exerted by society through Public Consultation, as well as by judicial and legislative bodies and Courts of Accounts, which have representatives at the federal, state and municipal levels, and also by the Public Ministry, an independent body of public prosecutors at the federal and state levels. Based on the Brazilian legislation, external controllers are supposed to assess and report irregularities or illegalities practiced during the elaboration of PPP projects and request adjustments in or interruption of the process (Dutra, 2006). The Brazil PPP Framework relies on the role of internal and external control bodies to supervise the PRI pre-tendering formulation of PPP projects.

It is often emphasized by experts and officials the importance of organizational inputs in place and well-trained professionals for a well-conducted PRI process (Dutra, 2006; Pereira, 2011b; M. P. Ribeiro, 2012a). Nevertheless, most states in Brazil that are still struggling to complete the PRI pre-tendering stage have already published PPP decrees, created PPP Managing Councils and implemented their PPP Units with clear roles and attributions to provide support in the PRI process. Many have also engaged in more than one PRI process and have developed experience in the process. Moreover, they have promoted several trainings and seminars for civil servant capacity building in PPP preparation. For example, in 2004 and 2005, respectively, the states of Santa Catarina and

Minas Gerais, which are currently facing incomplete PRI processes, promoted technical seminars for training on PPP preparation (Ministry of Planning, 2011). In particular, the states of Ceara and Sao Paulo, which have extensively invested in building technical capacity of city servants in PPP procedures and published the highest number of PRIs in Brazil, are currently struggling to complete several PRI pre-tendering processes (Pereira, 2013). Furthermore, the state of Santa Catarina created a company (SC Par) in 2005 dedicated to PPPs and PRIs, but, despite this, the state has not been able to complete the two PRI pre-tendering processes in which it has engaged in 2011-2012.

#### **2.8.4 Instrumental strategic framework: PRI decrees and manuals of best practices**

Another element of the PPP Framework is the instrumental strategic approach generally adopted for PRI pre-tendering cases of PPP formulation in Brazil. An instrumental strategy is also called rational comprehensive planning (Hart, 1992; Hart & Banbury, 1994), planned strategy (Mintzberg, 1994; Mintzberg & Waters, 1985) and linear planning (Chaffee, 1985). An instrumental approach to project formulation involves a clear separation between means and ends (plan elaboration and implementation stages), and assumes stability, control and predictability of environment (Mintzberg, 1994). It seeks to be comprehensive in scope and requires a high level of information processing through the gathering of internal and external data (Hart, 1992).

According to Mintzberg and Waters (1985), an instrumental strategy depends on the articulation of intentions in the form of a very detailed plan based on budgets, schedules and so on, to anticipated problems that may prevent its implementation as designed. It is often expressed in formal written strategic and operational plans with a detailed and inflexible course of action (Hart, 1992, p. 337). Moreover, this approach relies on formal controls to ensure exact pursuit of the plan since it assumes that the surrounding environment is controllable (Mintzberg & Waters, 1985). As Hart (1992) explains, effective implementation of such plans requires top managers to monitor and control the activities of subordinates who are held accountable for their performance against the plan. He argues that predictability is ensured through structure and formal systems because organizational members are induced to behave in desired ways. It is also assumed that actors are capable of implementing exactly what the plan tells them to do (Mintzberg, 1994). In the decisions to use instrumental planning and to believe that making such decisions is not a waste of time, Chaffee (1985) adds that “one must assume either that the

environment is relatively predictable or else that the organization is well-insulated from the environment” (p. 90). Rosenhead (1980) argues, however, that the emphasis of instrumental planning on prediction and certainty neglects problems that may arise from contingencies and from human fallibility or inconsistency. For him, “the need for flexibility is nowhere reflected in the prescribed routines” (p. 210).

The instrumental strategic approach for PRI pre-tendering processes in Brazil is influenced by the rational managerial model of ‘how to do things’ in the public sector. The instrumental approach was introduced in Brazil with the 1995 rational managerial reform in the public administration, and it was meant to overtake the rigidity and formalism of the procedural bureaucratic model through rational-instrumental plans, management techniques of decision-making, measurement of performance and focus on targets and outputs. However, as demonstrated in the previous sections on legal and organizational frameworks, public-private relations in Brazil are still influenced by the bureaucratic model even with the introduction in the 1980s of the managerial principles of public administration (Capobianco, Nascimento, Silva & Faroni, 2013; Drumond & Silveira, 2012; Gomes, 2006; Mafra, 2005; Silva, 2011; Siqueira, 2012). In the Brazilian context, the rational managerial model and bureaucratic model operate simultaneously and influence the PRI process of PPP formulation. Silva (2011) asserts that the Brazilian public system “is affected by a kind of hybridism through the juxtaposition of the various models of management and, therefore, depending on the policy applicability, it makes parallel use of these models” (p. 22). Consequently, the Brazil PPP Framework for PRI pre-tendering processes is also influenced by both models.

The instrumental procedures for the formulation of PPP projects are embedded in decrees of Procedure for Request of Interest (PRI), in the PRI publications, proposals and authorizations that follow the instruction of the decrees. They are also present in manuals of best practices that have been elaborated by states and municipalities for strategic instructions for PRI processes. These elements of the Brazil PPP Framework adopt principles of instrumental strategic planning based on the following aspects:

- formal written instrumental strategy and inflexible course of action;
- control of plan implementation, activities, results and performance through:
  - internal and external bodies;
  - requirements for participating in PRI pre-tendering process of PPP formulation.

The instrumental strategic approach for PRI pre-tendering processes requires separation between means (plan elaboration) and ends (plan implementation). For this, it also requires pre-definition of rigid strategic details for the process, such as scope, budget limit, activities and/or deadlines for project preparation, which are expected to be followed during the PPP formulation stage. Moreover, actors are subject to performance monitoring by internal and external control bodies during the process (articles 2, 4 and 9, Decree n. 5977, 2006).

PRI decrees and manuals of best practices also indicate that the private sector is the one that proposes the format of the instrumental strategy for the PPP formulation process. Decrees and manuals have embedded managerial ideas of principal-agency strategies (Jensen & Meckling, 1976). The public sector as the principal is expected to delegate responsibility for elaboration of a formal and written strategy to the agent, which is the private sector. To exemplify, in article 3 of the federal PRI Decree, it is established that PRI proposals submitted by the private sector must detail the activities to be carried out, considering the scope of projects, studies, surveys or investigations defined in the request, including the presentation of a schedule indicating the dates of completion of each stage and the final date for delivery of the work (article 3, IV, Decree n. 5977, 2006, own translation).

In addition to that, the instrumental strategic approach assumes actors can follow the rigid and specific details of the plan in a predictable way and that PRI pre-tendering process can be controlled by internal coordinators and internal and external control bodies through the organizational and legal frameworks created for public and private interactions. It also assumes that through its control mechanisms the instrumental strategic approach can account for distortions that can be caused by opportunistic behaviour, conflict of interests and information asymmetry (Ferris & Graddy, 1998; Terry, 1998), which may happen when the agent (the private sector) uses information advantage in its own interest, deviating from the objectives of the informal commitment agreed upon with the principal (public sector) (Ferris & Graddy, 1998; Terry, 1998).

The Framework tries to deal with information asymmetry through performance monitoring and by enabling a strategy based on the evaluation and validation of the PPP technical premises and documents by governmental bodies during and at the end of the PRI pre-tendering stage. This option is foreseen in PRI decrees and PPP laws, which enable Managing Councils, PPP Units and external control bodies (i.e. legislative bodies, Court of

Accounts, society) to supervise the elaboration and assess the quality of the PPP project, verifying the adequacy with legislation and the existence of implicit opportunistic advantages for the private sector (article 9, Decree n. 5977, 2006; Law n. 11079, 2004). These aspects represent the strategic basis for the relations between public and private sectors during pre-tendering processes.

As mentioned, the PPP Framework assumes that it can guide actors during the PRI process through rigid specification of scope, activities, budget and deadlines, through control by internal and external control bodies, but also through the ex-ante requirement of actors' expertise in the attempt to monitor the effort actors puts into the elaboration of the PPP project. PRI decrees determine that PRI publications must establish participation criteria in the pre-tendering process and request private actors to present in their proposals a full list of qualification and experience in the PPP project sector as condition for the authorization to elaborate the studies for the PPP project (article 3, Decree n. 5977, 2006). It is expected that these ex ante proof of qualifications can contribute to the elaboration of adequate PPP projects and to the completion of PRI pre-tendering processes.

Considering the aspects discussed, the instrumental strategic approach of the Brazil PPP FRAMEWOK is mainly represented by PRI Decrees, with standard legal procedures for application of instrumental strategies and control over the process. PRI Decrees also provide guidelines for submission of PRI proposals, requesting the elaboration of an instrumental strategic plan for the pre-tendering process. These are aimed at establishing a given arrangement capable of guiding actors through the pre-tendering stage towards completion.

In Brazil, many states and municipalities have published their PRI Decrees, following the model of the federal government (Decree n. 5977, 2006). Many municipalities also use the example of PRIs published by states or by other municipalities as model to their PRI publications. Nevertheless, many cases of pre-tendering PPP formulation in Brazil have published PRI decrees and PPP decrees; but they still failed or have not yet completed the process. For example, the state of Ceara published the PRI decree in 2010 with clear instrumental strategic guidelines, but it currently has 6 incomplete PRIs. Moreover, the states of Minas Gerais and Alagoas also published PRI decrees in 2007 and 2008, respectively, but they are also struggling to complete pre-tendering processes.

The strategy of PRI decrees is complemented by the instrumentality embedded in manuals of best practices and in the use of evidence and previous experience (Davoudi, 2006; Sanderson, 2002). These are also used as strategic guidance in many PRI cases in Brazil that have not completed the pre-tendering stage. Some states have manuals of best practices with the instrumental strategic procedures for pre-tendering stages and with guidelines for PRI publications, based on which the private sector prepares proposals with plans and strategies. They also have detailed techniques and methods for public sector monitoring of PRI pre-tendering processes. These manuals complement PPP laws and decrees and are supposed to be used as standard guidelines for PRI cases by trained teams of civil servants. The state of Ceara, Rio de Janeiro and Minas Gerais, for example, have elaborated manuals of best practices, but have many incomplete PRI cases as shown in Table 3 (State Government of Ceara, 2009; State Government of Minas Gerais, n.d.; State Government of Rio de Janeiro, 2008). Furthermore, the strategic instrumentality of the Brazil PPP Framework is also reflected in databases that provide evidence of previous experience available from other projects, such as publicity of examples of PRI publications, which are expected to serve as example for other cases (Pereira, 2012b). Databases are still limited, but some states have been using them, such as Ceara, Sao Paulo and Minas Gerais, which are among the federative units in Brazil with the highest number of incomplete PRI pre-tendering processes (Pereira, 2013).

### **2.8.5 Summary of section**

In Brazil, it is assumed that the combination of the four elements of the PPP Framework, drawing from bureaucratic and rational managerial influences, can guide PRI pre-tendering processes towards Public Consultation. The linear means-ends framework discussed in this section has been generally adopted in Brazil for PRI processes, but it has been unable to support many cases towards completion of the pre-tendering stage. The first element represents the policy framework and implies that the PPPs must be designated as priority instrument by the public sector. It is argued that prioritization of PPPs as policy instrument through regulatory, economic, fiscal and financial measures is essential for delivery of infrastructure in specified sectors (M. P. Ribeiro, 2012a). Another element is represented by implemented organizational frameworks and trained civil servants, which are perceived as rule-oriented, well-motivated and capable of controlling, guiding and coordinating the process. The Framework is also composed of legal and regulatory elements based on rules and conditions, standardized procedures and criteria



established in PPP Laws and decrees. Finally, there is the instrumental strategic framework, which assumes that the application of rational-linear and rigid plans assessed for performance are sufficient to reach the expected outcomes of the PRI process, in terms of PPP projects that result in value for money and that can be published for Public Consultation. Even though many cases of PRI pre-tendering formulation in Brazil have adopted the elements of the PPP Framework, many have failed or are still struggling to complete the pre-tendering process.

## **2.9 Conclusion**

This chapter contextualized in more detail the motivation, aims and objectives of this research, based on the following aspects: introduction of the concept and use of Public-Private Partnership (PPP) as policy instrument for infrastructure development worldwide and in Brazil; background of the PPP instrument and its perceived advantages and criticisms. Considering the need for additional investment in infrastructure in Brazil, this chapter also explained the Procedure for Request of Interest (PRI) mechanism, which federal, state and municipal governments have increasingly selected for the formulation of PPP projects. It was explained that, unlike the traditional approach of public project formulation, the PRI mechanism requires intensive informal interactions between actors at the pre-tendering stage. It was also clarified the complexity of the process related to the concept of project finance and the large number of interdependent stakeholders involved in the formulation of several technical studies. In the last section of the chapter, it was explained that there is a PPP Framework in Brazil, based on policy, legal, organizational and strategic elements, which has been insufficient to support many PRI pre-tendering cases of PPP formulation towards completion of the design stage (phase 1).

Considering that most PPP projects in Brazil have not been getting off the ground and the strong indications that significant problems are at the pre-tendering stage, the formulation of such projects based on the Procedure for Request of Interest (PRI), as the preferred mechanism used by governments in Brazil, deserves a better understanding. Based on an examination of the literature on Public-Private Partnerships, next chapter will obtain insights on elements affecting public and private actors in the processes of PPP formulation. These elements will be used for exploring the dynamics of actor-relations in the formulation of PPP projects for infrastructure development in Brazil. Two main aspects will be highlighted in the next chapter: the role of external forces and the dynamics of public-private interactions.

## **Chapter 3 - Public and private actors in Public-Private Partnership (PPP) projects**

### **3.1 Introduction**

This chapter is a review of aspects that influence public and private actors in Public-Private Partnership (PPP) projects according to the literature on the topic. The insights obtained will be used to explore the pre-tendering dynamics of relations between public and private actors in Brazil, as well as the elements that may influence their interactions for the pre-tendering formulation of PPP projects based on the Procedure for Request of Interest. It is important to consider, however, that there is limited literature on the design stage of PPP projects, which is the focus of this research. Consequently, this review also includes insights from the literature that focuses on the entire PPP process, which often make reference to the formulation stage

The literature on PPP for infrastructure development can be divided in two main groups. While most authors evaluate PPPs from a formal contracting out perspective focusing on formal elements and external issues that influence the process of project formulation, there are others who focus on the role of formal and informal dynamics of public private interactions for the elaboration of PPPs. The ones who are more structurally oriented examine the preparation of PPPs considering aspects such as cost-efficiency, performance and critical success factors for evaluating and proposing improvement for the formulation of PPP projects (Abdel Aziz, 2007; Ahadzi & Bowles, 2004; Chan et al., 2010; FMI Corporation Locations, 2011; C. Harris, 2003; S. Harris, 2004; Jefferies, 2006; Li, Akintoye, Edwards & Hardcastle, 2005; Qiao, Wang, Tiong & Chan, 2001). The elements suggested by this body of the literature are similar to the aspects covered by the Brazil PPP Framework discussed in the previous chapter.

On the other hand, there are studies that consider PPPs from a perspective of inter-organizational relations, networks or mode of governance, but not discarding PPPs as a policy instrument for infrastructure development (Klijn & Teisman, 2003; Koppenjan, 2005; Noble & Jones, 2006; Teisman & Klijn, 2002). Under this perspective, PPPs are more loosely defined as special arrangements for formal and informal public and private cooperation or long-term commitment for the joint development of products and services (Klijn & Teisman, 2003; Noble & Jones, 2006; Van Ham & Koppenjan, 2001). Studies under

this perspective tend to emphasize the dynamics of actor-relations when proposing approaches for PPP formulation.

Moreover, some of the studies considered in this review are based on empirical work in several countries. For example, Jacobson and Choi (2008) and Abdel Aziz (2007) focus their studies in the United States, while Dixon, Pottinger and Jordan (2005), Li et al. (2005) and Ahadzi and Bowles (2004) use information from PPPs in United Kingdom. Noble and Jones (2006) study PPPs in Australian and United Kingdom, while Khan (2005) focuses on projects in Sweden. The studies by Klijn and Teisman (2003), Teisman and Klijn (2002) and Koppenjan (2005) explore PPPs in the Netherlands, while Jefferies (2006) presents an Australian PPP case. As for specific studies in developing countries, Chan, Lam, Chan, Cheung and Ke (2010) analyze critical success factors for PPPs from a Chinese perspective, and Jamali (2004) provides insights of success and failure mechanisms of PPPs in the Lebanese context. Zhang (2005b) gives a more comprehensive perspective as he focuses on infrastructure development PPPs in several countries, including Australia, Hong Kong, India, Japan, Peru, Malaysia, South Africa and the United Kingdom.

The first section of the chapter will discuss the external forces that are suggested to influence PPP preparation processes. The main argument considers that problems and opportunities for the formulation of PPP projects are external to actors' interactions within the process. S. Harris (2004, pp. 19-20) highlights several external forces which are also mentioned by other authors, so his overall approach will be used to organize the discussion in the next section:

- Familiar legal and contractual frameworks;
- Administrative and organizational structures in place and local technical capability;
- Clear standard procedures and practices as strategic guidelines;
- Prioritization of the policy instrument in terms of clear definition of scope for potential projects and a committed and structured approach from the public sector to PPPs, as well as bankability of the PPP investment and country's good credit ratings (economic, commercial and financial environments);
- Manageable political sensitivities and political environment of stability (political culture).

The review in this chapter will also consider the other perspective which highlights the dynamics of public-private interactions during the process of PPP design. The literature

suggests that these dynamics are influenced by both formal and informal interactions between actors, by actors' capacity to learn and adjust perceptions, opinions and practices, as well as by the role of context in these adjustments and in the influence of external forces in processes of PPP formulation. These two perspectives (external forces and dynamics of interactions) will provide additional insights on the elements that may influence actor-relations in the pre-tendering process of PPP formulation in Brazil.

## **3.2 The external forces**

The literature on PPPs generally highlights the importance of a favourable external environment to support the formulation process of PPP projects (S. Harris, 2004; Zhang, 2005a). This section will review the main elements discussed in the literature as constraining and enabling external elements for the formulation of PPP projects. In line with S. Harris' (2004) perspective, it is sub-divided in five groups of external forces, which are also supported by several authors in the literature. Many argue that the most crucial elements influencing PPP project formulations are related to (1) the formal legal and regulatory arrangements, (2) organizational/administrative structures and (3) strategic aspects of how to organize and control the formulation of PPP projects. It is also frequently mentioned the importance of (4) policy elements, in terms of prioritization of PPP policies and the promotion of economic, commercial and financial environments to stimulate interest in such projects, as well as to (5) political elements, such as political instability, level of corruption and of public opinion support.

### **3.2.1 Legal and regulatory elements**

According to Pongsiri (2002), PPPs require effective government regulation on property rights, contracts, disputes and liabilities. For Abdel Aziz (2007), a major impediment for the formulation of such projects is the absence of PPP legislation. Insufficient and inadequate legal definitions of government guarantee types and procedures for selecting the most appropriate type of PPP scheme are also considered impediments (Li et al., 2005; Zhang, 2005b). Many authors also emphasize that the problems are related to the complexity of the decision making process, which require the need for standardization of PPP practices, procedures and contracts to improve negotiations, as well as the systematization of responsibilities for actors to perform assigned tasks (Abdel Aziz, 2007; S. Harris, 2004; Zhang, 2005a, 2005b). Examples that are considered to facilitate the PPP formulation process include laws that authorize highway

tolls (Abdel Aziz, 2007), and concession and tendering laws, which according to S. Harris (2004) can guarantee competition and possible financiers' approval for long-term loans.

### **3.2.2 Organizational and administrative structures**

The literature indicates that problems in the stage of PPP formulation can also be linked to the high level of bureaucracy in the public sector decision-making process (Abdel Aziz, 2007; Ahadzi & Bowles, 2004), as well as to lack of distinction between practice guidance and restrictive regulation, leading to excessive standardization in contractual clauses and conditions that actually impede the PPP design process (Ahadzi & Bowles, 2004). Some authors also argue that problems related to organizational and human capacity can interfere with the application of the legal requirements and strategic plans for the formulation of PPP projects. Under this approach division of responsibilities between public and private actors and external advisors invited to participate in the process are often considered imprecise aspects that must be clarified to improve the formulation of PPP projects (Abdel Aziz, 2007; Zhang, 2005b).

Clear roles and responsibility, and well-defined communication procedures among all stakeholders are also suggestions to improve public and private sector participation in these processes (Zhang, 2005b). Another problem is the absence of project parameters and comprehensive output and scope specifications of the services required from the project (Ahadzi & Bowles, 2004). Other problems that have been identified include lack of public and private experience and skills for coordination, structuring and management of PPP formulations (Abdel Aziz, 2007; Qiao et al., 2001; World Bank, 2012b; Zhang, 2005a, 2005b). A study conducted by Asenova, Beck, Akintoye, Hardcastle and Chinyio (2002) proposes suggestions for this. Based on the perspective of 68 public and private interviewees with involvement in PRI processes in Great Britain, the authors argue that these aspects can be handled through the involvement of managers with previous experience or qualified technical consultants, as well as through staff training and upgrading of skills and competencies (Asenova et al., 2002, p. 12).

### **3.2.3 Strategic approach**

Authors often suggest that problems with PPP formulation are related to the strategic arrangement for the process and mention that solutions are needed to provide more appropriate control and guidance mechanisms over the design process (Abdel Aziz, 2007; Li et al., 2005). According to the literature, a clear instrumental strategy is needed,

based on performance specification and methods for assessment of the costs and benefits, as well as for the development of methodologies to produce output-based specifications (Abdel Aziz, 2007; Li et al., 2005). Some authors stress as impediments the absence of risk allocation and management procedures to guide public and private actors in the contract negotiations and in the value for money elaboration and assessment during the formulation stage (Ahadzi & Bowles, 2004; Asenova et al., 2002; Li et al., 2005; World Bank, 2012b; Zhang, 2005b).

Other issues related to the instrumental strategic approach for the formulation of PPPs include lack of clear upfront government PPP objectives (Abdel Aziz, 2007; Ahadzi & Bowles, 2004; Asenova et al., 2002; Dixon et al., 2005; S. Harris, 2004), as well as cost and time overruns during the pre-contract stage (Ahadzi & Bowles, 2004; Asenova et al., 2002). As solution, Dixon et al. (2005) and S. Harris (2004) mention that output, quantity and quality of infrastructure and services must be clearly specified *ex ante*, and preferably based on the inputs from end-users of services during the preparation of the project.

It is also mentioned that strategic problems can be overcome through a collection and provision of historic data on obstacles and risks already managed in other projects (i.e. national database) (Asenova et al., 2002). For many authors there is lack of evidence-based 'best practices' to guide PPP formulation processes (Abdel Aziz, 2007; S. Harris, 2004; Qiao et al., 2001; Zhang, 2005a, 2005b). Zhang (2005b) argues that it is essential the "development of pathfinder projects in selected key sectors that can be used as models for future projects through the dissemination of standardized tender documents and model contracts, and best practice guidelines" (p. 175).

### **3.2.4 Policy elements**

Besides considerations over legal and regulatory arrangements, organizational and administrative capacity and strategic aspects there is also reference in the literature to the importance of a policy framework, which includes financial aspects and the economic and commercial environment for the formulation of PPPs. Considering the policy setting, many authors argue that the definition of priority PPP areas before actors' engagement in the formulation of projects is an essential element, and that poor definition of sectoral scope by the public sector is a major impediment (Ahadzi & Bowles, 2004; Asenova et al., 2002; S. Harris, 2004; Zhang, 2005a, 2005b). As S. Harris (2004) expresses based on his study in the United Kingdom, the government is the one responsible for prioritizing projects in the early

stages of PPP programmes, prior to the process of project formulation (p. 19). There are also comments with respect to level of political support, such as encouragement of government bodies and stability of political culture (Zhang, 2005a). Several authors also mention the importance in the clarity level of policies with specific reference to the sector in which the PPP is aimed at (Abdel Aziz, 2007; S. Harris, 2004; Li et al., 2005; Pongsiri, 2002; Qiao et al., 2001; Zhang, 2005a).

For some authors, the promotion of a favourable environment for the prioritization of PPPs depends on financial aspects, such as the existence of financial engineering techniques and of strong capital markets (Zhang, 2005b). For Akintoye, Beck, Hardcastle, Chinyio and Asenova (2001), new financing opportunities stimulate the interest of private sector in PPP projects. Financial aspects that are considered to create obstacles for the formulation of PPPs include lack of funds for these infrastructure projects and long delay in reaching financial closure, because of long negotiations with banks (Qiao et al., 2001; Zhang, 2005b). As Akintoye et al. (2001) mention, this is essential because during the initial stages of the PPP process private actors approach different banks and must obtain letters confirming that the project is feasible and that banks are willing to back it up. Several aspects they mention to influence negotiations with financiers include: adequacy of the cost coverage; credit worthiness of the parties; track record of the private companies; the importance placed on the project; technological reliability; and sufficient revenue generation for loan repayment (p. 363).

Other aspects include favourable economic and commercial conditions for PPP formulation, such as a stable macroeconomic scenario to provide confidence for the private sector; appropriate project identification; promising economy; long-term demand for project and services; profitability to attract investors; and the perceived ability of users and/or the government to pay for the cost of the new investment (S. Harris, 2004; Li et al., 2005; Qiao et al., 2001; Zhang, 2005a). On the other hand, the literature also refers to economic and commercial impediments, such as uncertainties in the economic climate in case of poor prospects for economic growth of the local economy and uncertainties in the demand and supply related to the object of the PPP contract (Zhang, 2005b).

### **3.2.5 Political culture**

Another element the literature suggests is political culture. It refers to aspects such as national and political institutions, electoral periods and pressure from interest groups

and public opinion, which may influence policy experts in framing problems, selecting PPP as instruments and designing project interventions (Béland, 2005; Kingdon, 2002). There are also references to positive or negative public opinion on the PPP and also community support, which according to the literature must be persuaded in order to facilitate the formulation of these projects (Abdel Aziz, 2007; Ahadzi & Bowles, 2004; S. Harris, 2004; Li et al., 2005; Zhang, 2005a). Some authors mention as political impediments the level of political instability in terms of general corruption, untrustworthiness of public officials and low credibility of government policies (World Bank, 2012b; Zhang, 2005b). Another aspect include the cultural philosophical and ideological differences between public and private sectors on the ways of thinking and acting (Abdel Aziz, 2007; Zhang, 2005b). For S. Harris (2004), the public sector must create and stimulate favourable environment (i.e. political, legal, economic and commercial aspects) for the formulation of PPP projects: “politicians need to provide a political lead, promote cultural change, explain and defend the policy and broker compromises to reflect political reality” (p. 15).

### **3.2.6 Summary of section**

Different external enablers and constraints on PPP formulation were considered in this section. A summary of the external forces is presented next, which according to the literature are influential in derailing or enabling the formulation of PPP projects.

#### **Legal and regulatory framework**

- Constraining aspects: absence of PPP legislation; insufficient definition of government guarantee types, of procedures for selecting the most appropriate type of PPP scheme; but also excessive standardization in contractual clauses and conditions.
- Enabling aspects: standardization of PPP procedures and contracts to improve negotiations, and the systematization of assigned responsibilities for actors to perform allocated tasks.

#### **Organizational and administrative capacity**

- Constraining aspects: high level of bureaucracy in the public sector decision-making process; lack of public and private experience and skills for coordination, structuring and managing of PPP.



- Enabling aspects: trained technical and organizational PPP Units with capacity for the application of legal requirements and strategic plans; collection and provision of historic data on previous projects (database).

### **Strategic approach**

- Constraining aspects: inability of actors to establish project parameters and prepare comprehensive output and scope specifications of services; lack of appropriate control and guidance mechanisms over the process.
- Enabling aspects: standardization of PPP practices and instrumental methods; risk allocation and management procedures to guide actors in contract negotiations and in 'value for money' elaboration for cost-effectiveness assessment.

### **Policy elements**

- Constraining aspects: low clarity level of policies aimed at PPP sectors; lack of political will and poor definition of sectoral scope; uncertain and weak economic climate and in the demand and supply related to the object of contract; poor prospects for economic growth; lack of funds for financing infrastructure projects and long delay in reaching financial closure because of long negotiations with financiers.
- Enabling aspects: prioritization of projects in the early stages of a PPP programme; political support and encouragement of government bodies; stable macroeconomic scenario; appropriate project identification; promising economy; long-term demand for project and services; profitability to attract investors; perceived ability of users and/or the government to pay for the cost of the new investment; strong financial engineering techniques and capital markets.

### **Political culture**

- Constraining aspects: cultural and ideological differences between public and private sectors; political instability in terms of corruption, untrustworthiness of public officials and low credibility of public policies.
- Enabling aspects: favourable national and political institutions, pressure of electoral periods and from interest groups and society; positive public opinion and community support.

Based on the previous discussion, the main aspects that influence the formulation of PPP projects are in the formal legal, procedural and organizational/administrative arrangements, in the financial, economic, commercial and regulatory environments, as well as in the political culture. These aspects do not place much emphasis on the interactions between public and private actors during the process of PPP project design. Joyner (2007) criticizes the dominant structural tendency in the analysis of PPPs – or P3 as she calls it - and appeals for more attention to a ‘socialized’ approach:

A strong bias toward economic and structural perspectives is a feature of the P3 literature (...). I assert that the literature would be enhanced by theories which help to explain the particular as well as the general. This would embrace the view that there are structural constraints of individual action, that these are social as well as economic, however that this constraint is not inevitable. How actors work within and transform these structures is a rich vein with the potential to add depth and texture to a somewhat sterile field (p. 208).

Next section provides a review of the literature that focus more on the social relations to which Joyner (2007) refers. It considers the dynamics of interactions between actors involved in the formulation of PPP projects, the influence of actors in the process and the role of social context.

### **3.3 The dynamics of public-private interactions**

Another body of the Public-Private Partnership literature emphasises the importance of the relations between public and private actors in processes of PPP formulation. Authors who adopt this perspective argue that such processes are similar to “patterns of social relationships between interdependent actors which take shape around policy problems and/or clusters of resources and that are formed, maintained and changed by an ecology of games” (Teisman & Klijn, 2002, p.137). Joyner (2007) argues that this approach is important, but the focus on formal cultures and external structures has taken the attention away from the influence of formal and informal relations on the process of PPP design. She says, “While understanding P3s as public policy instruments, we lose a detailed understanding of the particular social dynamics which arise from the coming together of the private and public sector” (p. 208). The approaches previously discussed to public-private interactions are mostly related to traditional contracting out initiatives, in which the government hires the private sector for infrastructure and service provision

based on formal arrangements, but with no joint decision-making or lengthy negotiations prior to tendering competition (Bovaird, 2004; Klijn & Teisman, 2000). However, the PPP literature also emphasizes that the social arrangement of public-private interactions influences the PPP formulation and that important factors to be explored in an analysis of the process include how different strategies and ways of thinking come together in formal and informal interactions and arrangements (Klijn & Teisman, 2003, 2005; Koppenjan, 2005; Teisman & Klijn, 2002). This will be explained in more detail in the next sub-section, followed by a review of the discussion in the literature that highlights the role of actors as creative learners with capacity to influence the formulation process of PPP projects. The last subsection reviews the role of social context in PPP formulations, which accounts for the influence of specific time and space in the process, such as the contingency of external forces, arrangement of interactions and adjustments in preferences and practices.

### **3.3.1 Formal and informal dynamics of actor-relations**

Some authors say that for an arrangement to be a public-private partnership, the private sector should not simply formally contribute with financial resources or receive from the public sector specifications for the service provision and for the desired output in a typical principal-agent relationship (Bovaird, 2004; Klijn & Teisman, 2000; Teisman & Klijn, 2002). Instead, it is argued that PPPs must involve the public and private sector working together in setting both input and output specifications through interactive relations based on mutual trust and mutually determined rules for interaction (Bovaird, 2004; Teisman & Klijn, 2002). From this perspective, the formulation of PPPs involve both formal and informal interactions between actors

Bovaird (2004) excludes from the definition of public-private partnerships relations between organizations which are simply traditional contracts or legally binding agreements with detailed specifications, such as contracting out arrangements which emphasizes a principal-agent relationship. Klijn and Teisman (2000) also make a distinction between public-private partnerships and formal contracting out relationships. They argue that while partnerships involve the public and private sector working together from the earlier stages of the decision making process to achieve effectiveness and synergy, contracting out refers to the public sector defining the problem and specifying the service to be provided by the private sector (Klijn & Teisman, 2000).

This perspective is directly related to the governance approach to public-private partnerships. From a governance perspective, McQuaid (2010) say that PPPs represent a

complex arrangement based on formal and informal interactions between public and private actors. Accordingly, Klijn and Teisman (2000) argue that Public-Private Partnerships are a reflection of a complex and interactive process of relations, not as straightforward as in contracting out, in which the government, as the organizer of the planning process, defines the problem, specifies the rules and goals, and selects a private company to deliver the solution. Klijn and Teisman (2000) also say that partnerships as networks of interdependent actors depend on the informal rules and organizational arrangements that can be developed over time in a process of interaction and communication, as actors adjust expectations and perceptions. These dynamics and interactive relations between actors in public-private partnerships are clearly reflected in the literature on networks, on public governance, as well as on relational and inter-organizational collaboration, discussed next.

From the perspective of the networks literature, the social arrangement between public and private actors may influence the formulation stage of PPP projects through the distribution and control of knowledge and resources needed for achieving outcomes, as well as through the complexity of interactions and negotiation processes between actors with different resources, perceptions and strategies (Klijn & Teisman, 2003; Teisman & Klijn, 2002). In the governance literature on networks, Public-Private Partnerships are mainly analysed in view of complex governance settings involving networks of interdependent actors (Meier & O'Toole, 2010). For Teisman and Klijn (2002), partnerships are a network form of governance, in which the public sector must consider its mutual dependency with other actors and try to make joint decisions in order to solve complex problems through cooperation. They argue that governments understand the need for partnerships due to the increasing complexity of the societal demands placed upon them, also called 'wicked problems' (Bovaird, 2004; Clarke & Stewart, 2003). This complexity is characterized by the involvement in networks of a variety of actors, the need for several resources and the existence of different perceptions and strategies (Teisman & Klijn, 2002). Klijn and Teisman (2000) also say that as public and private sectors become increasingly interdependent, both governments and firms function in networks, with more reliance on relational contracting than on hierarchical forms of operation (Klijn & Teisman, 2000). These network interactions increase the complexity of negotiations and decision-making processes, requiring adjustments and cooperation between the various actors (Klijn & Teisman, 2000).

Authors in the network literature on PPPs also argue that while public and private actors bring their different perceptions and strategies of rules and constraints from their own domains, they are interdependent and rely on synergy and joint development to work

successfully for PPP design (Klijn & Teisman, 2005; Koppenjan, 2005; Teisman & Klijn, 2002). The different domains are the public-private different ways of thinking and doing things (culture, ideologies, political views, decision-making procedures and mechanisms), which can create barriers to the process of PPP formulation (Klijn & Teisman, 2003; Teisman & Klijn, 2002). Authors in this body of literature defend that public and private sectors have different perceptions on risks, cultural orientations and strategic choice mechanisms that carry on to their network interactions for PPP formulation and may create challenges (Joyner, 2007; Klijn & Teisman, 2003, 2005; Koppenjan, 2005; Teisman & Klijn, 2002; Van Ham & Koppenjan, 2001). For Teisman and Klijn (2002) the obstacles for designing PPP projects are represented by institutional barriers against cooperation created by strict lines of responsibility and different ways of thinking (Teisman & Klijn, 2002). For example, Teisman and Klijn (2002) and Klijn and Teisman (2005) mention that governments have a tendency to use hierarchical decision-making mechanisms, while the private sector is generally market-oriented; and that these two ways of doing things cannot be merged without problems for the formulation of PPPs.

Besides rules and constraints brought to interactions from public and private existing domains, the literature on networks also emphasizes that the process of PPP formulation may require adjustments in actors' perceptions, in the arrangement of interactions and in the rules and constraints driving relations in the process. For this, it is suggested the use of process management to deal with the influence of rules and constraints on actors' interactions, as well as the introduction of new actors or the use of existing ones in the network (Klijn & Teisman, 2003, 2005).

Klijn and Teisman (2005) mention that decision-making in PPP preparation processes can only progress if the perceptions and strategies of the different parties involved in complex PPPs are coordinated to some extent, which is difficult to clearly delineate in advance. It is also argued that due to the actor-interdependency aspect present in PPP formulation arrangements, mutual adjustment of these perceptions and strategies is an essential prerequisite (Teisman & Klijn, 2002). Process management reflects the building of commitment, trust and joint image which are perceived as important to sustain the continuity of the process (Koppenjan, 2005; Waddock, 1989).

Furthermore, Klijn and Teisman (2005) also argue that the scope of PPP project can be constructed during the process, but this is not often realized by the actors because of the focus on formal elements of structural arrangements and given scopes. Similarly,

Koppenjan (2005) stresses that the specifications of a PPP project are not merely givens, but also the products of perceptions and processes. For him, assuming given political frameworks or public-private formal agreements on problems and instruments are simplistic solutions. Others also argue that the interaction between actors is essential for the construction of policy problems and selection of policy options, such as the PPP instrument (Béland, 2005; Kingdon, 2002). Similarly, Teisman and Klijn (2002) indicate that the specifications of the PPP scope undergo constant change through cyclical process during the stage. They argue that constant alterations in inputs and desired outputs require an on-going learning process and a willingness from public and private actors to look on a mutual basis for solutions and adjustment in project specifications. For Waddock (1989), it is important to have a common vision and goal at the outset, but these often need reshaping during the formulation process.

According to Harding (1998), public-private partnerships depend on a persistent and slow process of mutual learning and adjustment between the partners and in the continuing faith on the partnership's future benefits. For Bovaird (2004) accountability and decision-making have to be shared within partnerships and networks, implying trust-building and capacity-building. He adds that goals have to become integrated and partners must show mutual adjustment capacity, as well as the appreciation for long-term reciprocity, rather than require immediate returns (Bovaird, 2004). Koppenjam (2005) argues that prior to the creation of a formal partnership, public and private actors engage in an interactive negotiation and assessment process to "define the content of the project, investigate possibilities and risks, arrive at agreements on the distribution of costs, benefits, risks and responsibilities, and decide upon the arrangements that will govern their cooperation" (p. 138). Waddock (1989) suggests that for the formulation of PPPs there is the constant "need for hooking and rehooking partners into the partnership process" (p. 96). She adds that for this it is important the role of individuals who can make on spot decisions and with networking capabilities to bring the commitment of partners to the process. This is supported by the perception that management, leadership and supervision capacity of policy officials and other stakeholders is important to guide and coordinate actors' interactions in the project formulation process (Guimarães, 2011; Jardim, 2013 ; V. Monteiro, 2012; Moraes, 2012; Oliveria, 2013 ; M. P. Ribeiro, 2011a; Siqueira, 2012). Some authors also emphasize that management, leadership and creativity can be internally developed by stakeholders in their interactions (V. Monteiro, 2012; M. P. Ribeiro, 2011a). For this, partnerships may rely on actors that are already involved as part of the

arrangement of interactions, but may also invite others with that capacity to participate in the process.

Similarly, in the literature on relational and inter-organizational collaboration, Huxham and Vangen (2000) argue that Public-Private Partnerships are characterized by processes such as managing aims, managing language and culture and managing trust and power. In relational strand of literature, partnerships are also related to the concept of synergy. For Vangen and Huxham (2010), synergy can be created through joint working. For Lasker et al. (2001), synergy is defined as the capacity to merge the perspectives, resources, and skills of individuals and organizations. They add that synergy is not simply the exchange of resources, but the ability to create added value through group interaction, resulting in a whole that is greater than the sum of its parts (Klijn & Teisman, 2000; Lasker et al., 2001; Lowndes & Skelcher, 1998; J. Pierre, 1998a). According to Pierre (1998b), through collaborative efforts and interactions, the partnership created includes both the capabilities of the partners and also those derived by the fusion of the inter-organizational leverage. Lasker et al. (2001), add that synergy enables diverse partners to obtain creativity, as well as comprehensive, practical and transformative thinking, in order to tackle complex problems. For them, synergy is the contribution of different perspectives and knowledge by partners and can be seen in the actions and reasoning that emerge from the collaborative efforts. For Imperial (2005), voluntary inter-organizational collaboration relies on politics, bargaining, negotiation, and compromise, in which the exchange between actors are not guided by formal processes, but dependent upon communication, personal and organizational relationships, mutual interests, and reputation. Imperial (2005) also mentions that collaboration can take the form of a network, involving interdependence between multiple organizations in formal and informal stable relationships and leading to the development of shared norms and expectations.

### **3.3.2 Actors as creative learners**

While the previously discussed literature on networks, public governance and inter-organizational collaboration focuses more on relations and on institutional and organizational levels for the analysis of the formal and informal dynamics of public and private interactions, other authors focus on the role and skills of actors during these dynamic relations. A body of literature on networks and inter-organizational relationships highlights that active managers in public-private interactions can also influence the social arrangement and the way rules and constraints are enacted and developed in the process

of PPP formulation. It is emphasized that the public-private partnership formulation is increasingly complex because actors can influence the process through constant sensemaking, reflexivity and adjustment of expectations (Joyner, 2007; Koppenjan, 2005; Noble & Jones, 2006). As Joyner (2007) argues, one of the main challenges in PPP design is for competent leaders to manage a diversity of competing dynamics “by recognising ideological distortions, or assisting in reframing inhibiting factors, to ensure that balanced analysis or opportunities takes place” (p. 211). Nevertheless, the literature that focuses on the importance of active actors with learning and influential capacity in the PPP process is still limited (Joyner, 2007).

In their empirical study of ten Australian and UK PPPs, Noble and Jones (2006) stress the importance of managers in identifying obstacles and responding to them during interactions for the formulation of a PPP project, by challenging pre-conditioned mind-sets that reflect public or private cultural barriers. The study focuses on the changing managerial attention and perceptions during the process and on the types of challenges managers face prior to the implementation stage of PPP projects. Noble and Jones (2006) demonstrate that in each stage managers employ strategies to overcome challenges, ensuring the progressive evolution of the PPP, through leadership roles, identifying resources (actors with expertise, partners for the PPP) and adapting managerial mind-sets. The study by Noble and Jones demonstrate that actors are important for the construction of a path of interactions based on changing expectations and mind-sets for the process of PPP formulation.

Moreover, the study conducted by Spekman, Isabella, MacAvoy and Forbes (1996) shows that it is essential the construction of perceptions and expectations for the formation of alliances. Based on a set of in depth interviews with alliance partners in the United States and Europe, they conclude that conscious attempt at adjustment in expectations can influence the development of a common vision that represents a driving force for actors’ formal and informal interactions.

Kumar and Nti (1998) and Das and Kumar (2007) also highlight the role of changing perceptions through differential learning processes which influence interactions in partnerships. They say that partners have different abilities to appropriate new knowledge generated from their collaborative relationships, which the authors call ‘absorptive capacity’. In their study, absorptive capacity is reflected, for example, in partners’ collaborative strategies being influenced by other partners’ expression of satisfaction with



the relationship. The authors acknowledge that the arrangement of interactions influences the absorptive capacity of actors; and this arrangement includes aspects such as competence and quality of human assets, organizational culture, availability of resources and management systems. For Kumar and Nti (1998), “the way the partners interact with each other determines alliance outcomes as well as the partners’ feelings of psychological attachment to the relationship” (p. 365).

### **3.3.3 The role of social context**

According to the social relations perspective on PPPs, it is important to explore beyond the role of external rules and constraints for the formulation of PPP projects. This body of knowledge emphasizes that the interactions themselves must be understood in order to determine, manage and adjust the rules that stimulate or hinder the PPP formulation process. Authors mention that the structure of resources and network of actors can influence the process, and also stress that coordination and guidance can be constructed case by case to influence PPP project design. The role of social context in the formulation of PPPs has been associated with case by case specificities of time and space (C. Scott & Thurston, 2004). Reflecting on the contextual role of external forces over PPPs, Joyner (2007) argues that “unforeseen change [in] events result from the complex and shifting political, social and economic environment in which these projects are being implemented, and are often not within the control of the alliance parties” (p. 214).

Koppenjan (2005) also stresses that context influences the complexity of PPP formulation processes and must be considered in the analysis of obstacles and opportunities for the formulation of PPP projects. For him, it is important to understand each case because “each project has its own unique composition of success and failure factors so that solutions which are successful in one project will not necessarily work in other projects” (Koppenjan, 2005, p. 153). From a similar perspective, Van Ham and Koppenjan (2001) also mention the importance and challenge of strategies that emerge from actor-relations in different contexts of PPP project formation:

There is no blueprint at present for the procedural format of partnership and the question is whether this ought to be attempted. The situation is different for each project and also depends to a great extent on the creativity and the willingness of the parties. By definition this calls for a tailor-made approach (pp. 614-615).

In a similar way, Khan (2005) argues that understanding context is important to deal with the changing dynamics of project nature, actors' roles and relations during routine activities for project formulation (Khan, 2005). For him, flexible strategies for PPP design are essential because just as context changes from project to project, "the organizational design and the form of decision making, and the type of issues that will have to be dealt with during the planning process" also varies (Khan, 2005, p. 128). For Khan (2005), social relations influence the need for flexibility and adaptation in strategies to reflect adjustment in preferences for project elaboration in different contexts. He says that "during the planning process, goals and plans inevitably have to be changed due to factors such as new information, unexpected events, changes in preferences and the outcomes of negotiations between actors" (Khan, 2005, p. 128). Moreover, as Khan (2005) defends, the complexity involved in the formulation of PPP projects is intensified because the "differences between projects make it difficult to develop universal management guidelines and handbooks that will be relevant for all projects" (p. 128).

#### **3.3.4 Summary of section**

The PPP literature focusing on the dynamics of public-private relations highlights three main sets of influential aspects on the process of PPP formulation:

- Formal and informal dynamics of actor-relations: patterns and arrangements of social relationships; variety of interdependent actors with difference strategies and different access and control over knowledge, skills and resources; cooperation and collaborative efforts based on commitment, joint working, flexible strategies, communication, relationships, mutual interests, reputation and trust; embedded public-private cultural domains and ways of thinking and doing things;
- Actors as creative learners: the influence of process management and actors' conscious sensemaking, reasoning, reflexivity and adjustment of practices, opinions, perceptions and expectations in their interactions for PPP formulation;
- Social context: the influence of time and space on actor-relations and arrangements for PPP formulation; contextual role of external forces; the need for flexibility and adaptation in strategies to reflect contextual adjustment in preferences.

### **3.4 Insights into the Brazilian context for pre-tendering PPP formulation under the Procedure for Request of Interest (PRI) mechanism**

The PPP literature has revealed the importance of the formal and informal dynamics between public and private actors and the influence of external environments for PPP formulation. From the review this research has obtained additional insights about the Brazilian context for exploring the pre-tendering dynamics of relations between public and private actors and the elements that influence their interactions for the formulation of PPP projects under the Procedure for Request of Interest (PRI) mechanism.

As discussed in the previous chapter, the elements of the PPP Framework which have been used to guide the formulation of PPPs in Brazil do not clearly consider the complexity involved in these processes. Only some of the aspects suggested by the literature are considered in the Framework, which are the formal elements (legal and regulatory, administrative/organizational and strategic procedures and 'ways of doing things') and the external policy environment (financial, economic and commercial aspects). On the other hand, the PPP Framework has neglected two elements suggested by the PPP literature. First, it neglects the influence of complexity and informal public-private relations in the process, which characterize the pre-tendering stage of PPP formulation under the Procedure of Request of Interest (PRI) mechanism, as already discussed in Chapter 2. The Framework also neglects the role of political culture. Based on the insights from the literature, the 'political culture' aspect may contribute to the complexity involved in designing PPP projects in Brazil and must be considered in an in-depth exploration of actor-relations in the pre-tendering process of PPP formulation.

The literature on external forces suggests that political cultural aspects can influence the formulation of PPPs, such as pressure from interest groups, positive or negative public opinion, philosophical and ideological differences, as well as level of political stability, corruption, trustworthiness of public officials and credibility of government policies (Abdel Aziz, 2007; Ahadzi & Bowles, 2004; S. Harris, 2004; Kingdon, 2002; World Bank, 2012b; Zhang, 2005a). Moreover, the literature on the dynamics of formal and informal relations suggests that differing ideologies and political views can create barriers to the process of PPP formulation (Klijn & Teisman, 2003; Teisman & Klijn, 2002).

In Brazil, there is a political culture that has long influenced traditional public-private relations, which can also influence pre-tendering arrangements (Marques Neto, 2013; M. P. Ribeiro, 2011a, 2012a; Veríssimo, Cucolo & Froufe, 2012; Zanini, 2007). Since PPPs and the PRI mechanism are new topics in Brazil, some experts understand that external influences are brought to the PRI pre-tendering process from more traditional ways of public-private interactions in the country. Despite the fact that public and private sectors have worked together for decades in the provision of services and infrastructure in Brazil, their social interactions are frequently guided by insecurity and scepticism, which is only reinforced as they continually interact (Nunes Pinto, 2004).

Experts argue that traditionally there is a culture of distrust in their interactions (E. Odebrecht, 2009). The private sector distrusts the government's commitments to meet its payment obligations on time, and the managerial and operational competence of public sector human resources (Nunes Pinto, 2004). On the other hand, the government is suspicious that the private sector will not honour its contractual obligations or deliver the object of contracts in due time (Nunes Pinto, 2004). These perceptions may hamper the dialogue between the two sectors and the potential opportunities for cooperation during pre-tendering arrangements of PPPs (Johannpeter & Unger, 2009). It is argued that these existing cultural and political barriers can strongly influence cooperation, information sharing and negotiations in the PRI process (Marques Neto, 2013; M. P. Ribeiro, 2011a, 2012a; Veríssimo et al., 2012; Zanini, 2007). For Marques Neto (2013), PPPs still face resistance, especially in the areas of the public administration and control bodies. For him, this resistance is due to an unreasonable and anachronistic attachment to the traditional regime of public procurement, which leads people to proclaim in PPPs the same problems of the traditional tendering approach. According to Marques Neto (2013) this confusion has an unfavourable effect for the formulation of PPP projects because of a resistance eminently ideological and of traditional roots which is contrary to the delegation of public services to the private sector and which already occurs in the common concessions (Marques Neto, 2013, own translation).

As it is understood, external influences from traditional perceptions of public-private relations in Brazil may impose challenges to the PRI formulation of PPPs, requiring a long and complex process of negotiation between public and private actors during the pre-tendering stage (Barros Neto, 2006; Marar, Aragão & Santos, 2004; Nunes Pinto, 2004; Percio, 2011). This scenario increases the complexity of the process and may require

adjustments in the formal and informal practices and perceptions during the PRI process due to its high dependency on interactions. Therefore, the external influence of the political culture must be accounted for in the analysis of PPP formulations in Brazil.

### **3.5 Summary and conclusion**

The literature indicates several formal and informal aspects that influence the formulation of PPP projects. As Joyner (2007) argues, for a better understanding of the PPP formulation process, all of these aspects must be taken into consideration: “If we accept the complexity of these forms we may need to think analytically about a ‘larger chunk’ of the phenomenon by considering a wider range of explanatory factors” (p. 214). These aspects have been grouped in two categories. One emphasizes the influence of external forces represented by legal and regulatory arrangement, organizational and administrative capacity, strategic approach, policy framework, involving financial, economic and commercial environments and also political culture. The other category highlights the internal complexity of the formal and informal dynamics of actor-relations in the process of PPP design, considering actors as creative learners and the influence of social context. To understand a PPP formulation process accounting for all of these elements, this research will adopt an institutional theoretical approach, which is explained in the next chapter. The theoretical perspective chosen provides tools for an in-depth exploration of the research topic. These analytical tools will be explained in more detail in Chapter 5, which sets out the conceptual framework of the research. This framework will be used to guide the analysis of the case study based on the research strategy and qualitative methods adopted, as presented in Chapter 6. The research findings will be presented in Chapters 7, 8 and 9, based on the theoretical and conceptual frameworks that will be explained in the next chapters.

## Chapter 4 - Theoretical Framework

### 4.1 Introduction

This research adopts an institutionalist theoretical approach for exploring the pre-tendering formulation process of Public-Private Partnerships (PPPs) projects in Brazil. The use of institutional theory for analysing the formal and informal dynamics of actor-relations in the formulation of PPPs is an innovative approach. There is a 'blind spot' in the literature on Public-Private Partnerships concerning the institutional analysis of dynamic processes. Although not directly related to PPPs, this topic has received some attention in the management literature (D'Aunno & Zuckerman, 1987; Dwyer, Schurr & Oh, 1987; Phillips, Lawrence & Hardy, 2000; Ring & Van de Ven, 1994). In the literature on institutional economics (and on new economic sociology) studies on processes and relations among organizations tend to adopt a general theoretical perspective mainly concerned with the relations between firms in the market (Granovetter, 1990; Stinchcombe, 1997). In the literature on planning theory, some authors acknowledge the existence of a 'black box' in the study on the dynamics of governance processes and practices because most focus instead on the outcomes of governance performance or on the input-output approach to policy analysis (González & Healey, 2005; Healey, 2006), but this has not been developed in the context of Public-Private Partnership studies.

Moreover, the formal and informal interplay of actor-relations, which is the focus of this research, is not addressed with enough emphasis in the literature on PPPs. On one hand, the literature focuses on the formal contractual arrangements and legal frameworks that guide actors' interactions through different financial contracts and legal procedures for the delivery of public services (Akintoye et al., 2001; Pongsiri, 2002). On the other hand, some authors focus on the informal agreements and structures that drive and are constructed by the relations between actors, which is mainly addressed by the governance literature on networks (Keast, Mandell, Brown & Woolcock, 2004; Klijn & Teisman, 2000; Teisman & Klijn, 2002) and on inter-organizational collaboration (Lowndes & Skelcher, 1998; Mandell, 1999). Nevertheless, most studies of Public-Private Partnerships do not integrate formal and informal actors' interactions in their analysis to assess the simultaneous occurrence of formal and informal processes involved in the formulation of PPP projects.

Two broader theoretical perspectives were considered for this research based on the insights from the literature on PPPs (external forces and dynamic relations). On the one

hand, theories mostly based on structural perspectives, such as urban regime and network-structure, would help to understand the role of external forces, but were not adequate on their own for exploring the autonomy of actors in formal and informal dynamics of interactions. Nevertheless, as Lowndes (2001, p. 1963) and Davies (2003, p. 266) argue, some authors who have adopted structural theories have also attempted to provide a more 'inward-looking' perspective on actors (i.e. Lauria, 1999; J. Pierre, 1999; Rhodes, 1997). Even Rhodes (2007), who is an advocate of a network-structure perspective in governance, asserts that new directions for governance theory should focus on actors' "beliefs, practices, traditions and dilemmas" (p. 1243) as the new alternative for "conceptualizing the institutions, actors and processes of change in government" (p. 1259). However, structural approaches still tend to keep an analytical focus on external forces, which is not appropriate to unpack actor-relations in the formulation of PPP projects that also seem to be largely influenced by actors as creative learners in dynamic interactions. Although these theories were not selected for this research, it was acknowledged that any other theoretical approach would have to take into account the role of external forces, especially based on insights from the PPP literature and considering the structural tendencies of organizing the formulation of projects in Brazil.

Alternatively, the other theoretical perspectives considered mostly emphasize the role of actors and their relations. In view of other aspects highlighted as influential in processes of PPP formulation (in Chapters 2 and 3), such as complexity, interdependency of numerous stakeholders and formal/informal relations, two approaches were considered relevant for exploring this research's topic: complexity theory and institutional theory. Complexity theory may be useful for exploring some aspects identified in the PPP literature, such as the interactions and relations between actors. On the other hand, the unit of analysis of complexity theory is the system, comprised of numerous interacting parts behaving in accordance to rules, laws or forces (Klijn, 2008). The system has emergent properties that influence network-relations, which actors can only manage, but not intentionally control (Anderson, 1999; Wagenaar, 2007). For example, in a study on complexity theory from a network perspective, Klijn (2007) asserts that in the system "[t]he possibilities for institutional design, and consciously influencing and changing institutional characteristics of networks (...) is hardly possible" (p. 272). Moreover, for complexity theory, external forces are assumed to affect the system in unexpected and contingent ways, but actors respond to these forces in accordance with systemic emergent properties (Klijn, 2008).

Consequently, the assumptions of complexity theory limit the extent to which constructed preferences and expectations can deliberately influence the design of formal and informal systemic rules and responses to the contingent effect of external forces in the pre-tendering process. Complexity theory studies that attempt to introduce a more active role for the deliberate influence of actors on the network or system have used the rational choice approach of new institutional theory in order to complement the limitations of that theory (Blom-Hansen, 1997; Koppenjan & Groenewegen, 2005). However, as it will be discussed later in this chapter, rational choice assumptions defend that actors have fixed preferences, which is also not in line with the idea of actors adjusting decisions and preferences (an insight obtained from the PPP literature review). Institutional theory, on the other hand, provides tools for exploring the role of actors as creative learners and capable of influencing the context of their relations, as well as tools for considering the influence of external forces and actors' reflexive ways of adjusting to them. Nevertheless, using institutional theory to account for all of these elements requires a combination of assumptions from different strands of institutionalism, because old and new approaches alone provide insufficient tools.

This chapter will review both old and new institutional theories, since assumptions from both will be incorporated into this research's theoretical framework. It will first address the rational choice strand of new institutionalism and discuss its limitations for this research. Second, it will introduce the sociological-organizational perspective, consider its strengths and weaknesses for the purposes of this research and explain how the strengths will be incorporated into the theoretical framework. In the last section, old institutionalism will be introduced as the main theoretical foundation adopted. It will consider its strong points and explain how its limitations will be addressed, especially its weakness in addressing the role of external forces. The theoretical framework discussed in this chapter will provide the general concepts that will be operationalized in more detail in the next chapter, which explains the conceptual framework of this research.

## **4.2 Institutional theory**

Institutional analysis of Public-Private Partnerships focuses on the complexity of the multiple internal and external dynamics involved in the relations between actors (Healey, 2007). As Eisner (2011) asserts, for institutional analysis, the public and private sector are not opposing forces, but institutionally intertwined (p. 14). The workings of the private sector are influenced by a wide range of institutions, both formal and informal, and not



simply governed by profit-making mechanisms and laws of supply and demand (Chang, 2002). For Eisner (2011), public sector operations are also influenced by institutions, in which rules, roles and procedures define the inner workings of organizations, influencing public policy decisions and shaping the relation between public and private actors (p. 14). Besides helping in understanding the influence of institutions on public and private sectors, institutional theory provides tools for exploring a gap in the empirical analysis of PPPs, which has neglected the influence of the dynamics of public-private actor-interactions on institutions. This dual approach is in line with old institutionalism.

Institutionalism is in fact interdisciplinary and disagreements can be found in the literature (DiMaggio, 1998; Hall & Taylor, 1996; Healey, 2007; Samuels, 1995). New institutionalism is often criticized for giving primacy to either institutions through norm-governing behaviour (sociological-organizational perspective) or to individual actors' strategic action (rational choice approach) (Lowndes, 1996). However, a general agreement in the institutionalist literature is the understanding of institutions as a constraint and enabler on the behaviour of actors, but also as a product of human action, even if more emphasis is placed on either side of this dialect relationship in different perspectives (DiMaggio & Powell, 1991; Lowndes, 1996). Different approaches to institutionalism will be reviewed next, in order to specify that this research will adopt a perspective that is in line with old institutionalism, but still obtains complementary insights from the sociological-organizational approach of new institutionalism.

#### **4.2.1 New Institutional theory**

The new institutionalist approaches reviewed in this research include the rational choice institutionalism and the sociological-organizational institutionalism. Both recognize the role of institutions as formal and informal rules and constraints on actors and relations. The rational choice institutionalism perceives institutions as stable in time and space, and focus on the role of rational maximizing actors who make strategic choices within the boundaries of institutions. On the other hand, the sociological-organizational approach perceives institutions are less fixed in time and space, but still relatively stable, and focus on the norm-governed behaviour of actors, which is determined by their cultural-cognitive institutional frames. However, new institutionalism approaches fall short in explaining the shaping of actors preferences through relations and the possible dynamic influence of actors and their interactions on rules that guide actors' behaviour. The two perspectives are discussed next.

### ***Rational choice institutionalism***

Rational choice institutionalism assumes that the formal and informal rules (institutions) influence actors in a predictable way, based on actors' expected behaviour and according to their fixed preferences, expectations and interests. This approach is mostly based on the institutional work of Douglas North (1989) and Oliver E. Williamson (1985, 1998). North (1989) sees formal and informal institutions as incentive structures that influence individuals' utility maximizing behaviour. Williamson (1998) focuses on the study of the institutional environment in which institutions are efficient organizational frameworks, which are represented as markets, hybrids or hierarchic forms (Lowndes & Skelcher, 1998; Williamson, 1998). Rational choice institutionalism sees individual as having bounded rationality (limited information) and given preferences, as well as strategically using a calculus approach to maximize their benefits and seeking to reduce uncertainties about transaction costs (Hall & Taylor, 1996).

According to rational choice institutionalists, actor-relations are the sum of predictable individual actions, and these actions are seen as minimally affected by social context. They adopt a methodological individualist approach in which the individual's strategic choices are the main unit of analysis (Hodgson, 1998, 2000; W. Scott, 2004). Actors are assumed to have fixed preferences and make decisions by comparing costs and benefits of alternative options either to create institutions considered efficient or to make decisions when bounded by them. Based on this perspective, actors apply the logics of efficiency or consequentiality and compare expected costs and benefits of choices in order to choose strategies that provide optimal consequences given their interests (Alexander, 2005). All of these assumptions are not testable hypothesis, and a research based on rational choice institutionalism should take them as the starting point of the analysis (Cole et al., 1991; Wendt, 2001).

Nevertheless, the assumptions of the rational approach limit the extent to which the categories suggested by the PPP literature can be explored. Its assumptions are in contradiction with the suggestion in which actors' changing preferences for the construction of rules and constraints may also affect them in the process of PPP formulation. Moreover, if rational approach assumptions were taken into consideration from the start of this research, the behaviour of actor and their interactions in the process would become predictable; leaving not much else about actor-relations to be explored. The

focus would be on the outcomes of those relations and not on the process of actors' interactions.

Rational choice institutionalism provides useful insights into concepts of formal and informal rules as institutions, which are important for this research. For North (1989), institutions can be defined as "rules, enforcement characteristics of rules, and norms of behaviour that structure repeated human interaction" (p. 1321). Formal rules are constitutions, statute and common laws, and contracts (North, 1989), but also contracts, administrative hierarchies, legislative and decision-making procedures, budgeted mechanisms and bureau types (Williamson, 1998). Informal rules are institutions of governance and represented by norms, codes of conduct, taboos, standards of behaviour, experience or ideologies (religions, social and political values, etc.) (North, 1989, p. 1322). On the other hand, a rational choice approach for understanding actor-relations based on "undersocialized" explanations of atomized-actors (Granovetter, 1985, p. 483) does not seem applicable for this research because it limits the exploration scope of dynamic processes in the analysis of PPP formulation.

### ***Sociological-organizational institutionalism***

Sociological-organizational institutionalism assumes a more autonomous role for formal and informal rules (institutions), in which the individual is not the unit of analysis, but the institutions that govern the behaviour of actors in their social relations (Lowndes, 1996; Sanderson, 2000). It tends to adopt an "oversocialized" perspective in which formal and informal social structures constrain actor-relations (Granovetter, 1985, p. 483). Supporters of this approach advocate that formal and informal rules embedded in social structures work as symbols and myths that constrain behaviour in relational networks. The myths are either applied because of internalized or embedded prescriptions that specify them as the appropriate means to pursue a purpose, or because they have been institutionalized and are taken for granted as legitimate, but not necessarily because of efficiency evaluations as in the rational choice approach.

The sociological-organizational approach to institutions is useful for understanding the category obtained from the PPP literature that suggests a role for the influence of the formal and informal rules and environmental constraints on actors and their interactions. However, similar to the limitations of rational choice institutionalism, this approach provides limited analytical tools for exploring the dynamic influence of actors' changing

preferences and their interactions for the conscious construction of rules and constraints that affect them in the process of PPP design. As Hirsch and Lounsbury (1997) argue, new institutionalists from the sociological and organizational strand have not effectively linked change and creation of institutions to the activities of individuals and organizations. Moreover, advocates of this perspective recognize this limitation; as DiMaggio and Powell (1991) assert, “neoinstitutionalists tend to reject socialization theory” (p. 15).

From a sociological perspective, Campbell (1998) distinguishes the rational choice approach to institutionalism from historical institutionalism, advanced by some political sociologists and political scientists, and from organizational institutionalism, supported by organizational sociologists. In historical institutionalism, according to political scientists Hall and Taylor (1996) and to sociologist Campbell (1998), formal and informal institutions provide ‘scripts’ and ‘road maps’ for interpretation and for political and social action, which are institutionally determined and constrained by frames of ideas, symbols, and routines that influence a course of action. According to historical institutionalists, institutions are also considered the consequences of interactions among political actors that have lasting effects across time (Thelen, 1999, p. 388). Organizational institutionalism, often associated with DiMaggio and Powell (1991), also stresses the importance of routines and habits in actors’ underlying cognitive framework, which are ‘taken for granted’ scripts and almost invisible to the actors themselves. Nevertheless, some organizational institutionalists argue that actors can deliberately manipulate culturally-cognitive given concepts to tackle problems (J. Campbell, 1998).

Another type of institutionalism discussed by political scientists Hall and Taylor (1996) is the sociological institutionalist approach, similar to new institutionalist sociology or social constructivist neo-institutionalism (DiMaggio, 1998; Nielsen, 2001). Based on this perspective, culturally constructed conceptions or cognitive scripts guide human action (Hall & Taylor, 1996). Advocates of this approach also argue that besides affecting the strategic calculation of social actors, institutions help to constitute their identities and preferences. For Hall and Taylor (1996), although in some instances supporters of this strand say that institutional practices arise from more interactive processes, in which actors share with each other ways of interpreting and solving problems, these supporters still believe that individuals are rational and goal-oriented, but in a sense that the rational action is socially constituted and bounded up with interpretation, in which behaviour is influenced by individuals’ worldview (Hall & Taylor, 1996). They also tend to focus at the macro level of processes, leaning towards a methodological collectivism often

characterized by 'action without agents', and also to emphasize the constraining role of institutions ('taken for granted' scripts) over the bounded rationality of actors (Hall & Taylor, 1996).

#### **a. Actors as rule-followers**

In general, for sociological-organizational institutionalists, institutions are symbolic templates, taken for granted beliefs and culture which are incorporated through cognition by actors from their field or sector and based on which they responds to stimulus. According to DiMaggio and Powell (1991), standardized cultural forms, typifications and cognitive models lead new institutionalists to adopt level of industries, sectors, professions, nation-states and societies as the environment that affect actors. Their basic unit of analysis are the embedded rules and practices, identities and roles, normative and causal beliefs, and resources, drawn from their macro-field, sector or society (Olsen, 2007).

Although this approach recognizes that institutions are created by human action, it does not focus on the active role of actors in consciously creating institutions through their interactions. In fact, the core assumption is that institutions represent an enduring collection of rules and practices embedded in "structures of meaning and resources" which create order and predictability, have durable and independent effects towards individual actors and environments, and are "relatively invariant in the face of turnover of individuals and changing external circumstances" (Olsen, 2007, p.2).

According to the 'logic of appropriateness' advocated by March and Olsen (2006), actors associate certain actions with situations by rules of appropriateness and act in accordance to embedded practices of collectivity and mutual understandings of what is true, reasonable, natural, right, and good for a specific situation (Olsen, 2007). For this, actors try to meet the obligations and duties of a role, an identity, and a membership in a political community by following the rules considered adequate for the task at hand (March & Olsen, 2006). For March and Olsen (2006), rules of appropriateness are relatively stable and difficult to change. They argue that in scenario of ambiguity and conflict among alternative concepts or prescriptions on ways of thinking and doing, what most likely varies is the way embedded rules are translated into behaviour, and not the rules themselves.

#### **b. The role of rules as constraints: adjustment and reproduction**

As explained by March and Olsen (2006), this approach considers that changes in embedded practices and discourses (adjustment in rules) occurs when an existing order,

the rules of appropriateness and collective understandings no longer make sense and are challenged by new experiences, which become difficult to account for in terms of existing 'ways of thinking and doing things'. When embedded practices and discourses no longer provide adequate answers to what is appropriate behaviour, the search begins for new approaches to provide legitimate answers coherent and standard responses in actors' understandings (March & Olsen, 2006). This learning process of new cognitive frames may be triggered by "disasters, crises and system breakdowns", characterized by changes where established orders are questioned and no longer considered legitimate for failing to give appropriate answers (March & Olsen, 2006, p.700).

The new institutionalist approach of DiMaggio and Powell (1991) adopts a similar perspective to March and Olsen's (2006) on the prescriptive and rigid character of rules. For them, institutions are created through the process of isomorphism or homogenization, in which an organization either mimics another that faces a similar set of environmental conditions in scenario of uncertainty and ambiguity, or is constrained by formal or informal coercive pressures exerted by other organizations or cultural expectations for the adoption of certain types of standard responses. In mimetic isomorphism, the copied institutional environment gives legitimacy on what is best for the organization's survival (DiMaggio & Powell, 1991). An organization follows the myths of the environment and borrows the source of practices from others in order to define the conditions and methods of their own work. DiMaggio and Powell (1991) explain that this happens when goals are ambiguous, when the environment creates symbolic uncertainty, or when an organization faces unclear solutions. Institutional myths are considered so strong that they lead to isomorphism among different organizations, where similar structures and homogenization drives change, leading to institutional reproduction (Lowndes, 1996). According to DiMaggio and Powell (1991), institutional isomorphism happens even in the absence of evidence that it increases efficiency, because organizations model themselves after similar ones in their field which they perceive as more legitimate, reputable and successful. For example, they may copy "administrative categories that define eligibility for public and private grants and contracts" in order to facilitate transactions between organizations with 'similar-minded' ways of acting (p. 73).

As for coercive isomorphism, DiMaggio and Powell (1991) argue that pressures from government mandate, political influence, common law and regulatory requirements, as well as the imposition of standard operating procedures and legitimated rules, lead to

homogenized structures, methods and procedures around rituals of conformity to wider institutions. For DiMaggio and Powell (1991), the existence of a common legal environment, for example, affects many aspects of an organization's behaviour and structure in similar ways. They mention the system of contract law – such as the one used in Brazil - which requires certain organizational controls to honour legal and technical commitments and requirements of the state, such as variations of the budget cycle, fiscal and annual reports, and financial reporting requirements that ensure eligibility for the receipt of federal contracts or funds. Both mimetic and coercive isomorphism assume that “compliance with taken for granted beliefs about how to best organize, and towards what ends, become more important than the actual efficacy of dominant structures and practices” (Lowndes, 1996, p.185).

The work of March and Olsen (2006) on the logic of appropriateness and DiMaggio and Powell's (1991) institutional isomorphism emphasize the rule following behaviour of actors, as well as the rigidity of the rules that influence actors. This sociological-organization perspective is often associated with Bourdieu's concept of 'habitus' in which people are not necessarily considered conscious with respect to the influences on their behaviour (Burke, Joseph, Pasick & Barker, 2009; Hirsch & Lounsbury, 1997). However, Bourdieu (1990) goes a step further than this 'taken for granted' new institutionalist approach and shows a concern with conscious agency in transforming the application of 'habitus' in practice. As Bourdieu (1990) argues:

“It is, of course, never ruled out that the responses of the habitus may be accompanied by a strategic calculation tending to perform in a conscious mode the operation that the habitus performs quite differently, namely an estimation of chances presupposing transformation of the past effect into an expected objective” (p. 53).

The theoretical approach adopted for this research is in accordance with this perspective, in which 'habitus' may influence actors but may also be deliberately changed by them in their interactions in practice.

### **c. The sociological-organizational approach in this research**

Some assumptions from the sociological-organizational perspective will be incorporated into this research framework, but considering actors not only as rule-followers. It will also account for actors as creative learners, capable of reflecting upon and

changing embedded rules and practices in specific events of interaction. As Hodgson (1998) stresses, when “a conception of the individual agent is involved, it is one which emphasizes both the prevalence of habit and the possibility of capricious novelty” (p. 173). It will be assumed in this research that institutional myths can be incorporated into actor-relations through embedded beliefs and culture leading to the replication of institutional practices and structures. This research also agrees that actors may follow rules of appropriateness, by enacting the internalized practices that they consider most appropriate for the circumstances. However, different from DiMaggio and Powell and March and Olsen, it does not assume that actors take these rules mostly as ‘facts’ and apply them in a rather automatic way without any reflection. Although new sociological-organizational institutionalists accept that institutions are the products of human action, their rejection of intentionality stresses the “unreflective, routine, taken-for-granted nature of most human behaviour and views interests and actors as themselves constituted by institutions” (DiMaggio & Powell, 1991, p. 12). This research, on the other hand, does not assume actors’ preferences to be simply shaped by taken for granted cultural-cognition or prescribed rules of appropriate behaviour. It assumes, instead, that actors have the capacity to learn, adjust and improvise, as well as choose to follow or not existing practices and routines in their social interactions.

Furthermore, this research does not adopt the sociological-organizational focus on the influence of the macro-level of sector, field or society on the institutional frames internalized by actors and which drive their interactions (DiMaggio & Powell, 1991; March & Olsen, 2006; Olsen, 2007). Instead, it adopts a micro-level perspective, in which it is through actors’ interactions that it explores institutions that are socially constructed either through the enactment of embedded practices, opinions and assumptions from macro-level or through improvisation from micro-level social relations. Therefore, unlike the new institutionalist approach, this research also presumes the possibility of dynamic institutional change arising from actors’ autonomy in their interactions; but it also allows scope for institutional reproduction of scripts through the consciousness of actors in social relations. This is important in order to account for the suggestion from the PPP literature in which there may also be an important role for actors’ changing preferences, expectations and opinions during the process, as well as for the conscious influence of actors on the construction and selection of formal and informal institutions that in turn influence their interactions during the formulation of PPP projects. A more dynamic institutional



theoretical approach is discussed next, which is the old institutional theory and its social constructivist perspective of the world.

#### **4.2.2 Old Institutional theory**

The theoretical approach of this research is based on the social construction of institutions and on the influence of social relations on actors' preferences and decisions; not on the behaviour of rational, self-interested atomized actors (rational choice approach), and not on the structural influence of taken-for-granted cultural rules that limit actors' capacity to make conscious choices and adjust preferences (sociological-organizational approach). Old institutionalism does not consider the methodological individualism of rational choice perspectives, in which institutions are related to the actions of given and self-interested individuals. It is also not limited to a methodological collectivism of some strands of sociological institutionalism, in which the behaviour of an individual is entirely explained or shaped by institutional circumstances, leading to a 'top-down' structural or cultural determinism (Hodgson, 1998, 2000; W. Scott, 2004). Old institutionalism is interested in the dynamic process of construction of institutions (Granovetter, 1992), without neglecting individual autonomy and agency, but accounting for both upward effects (influence of actors on institutions) and downward effects (influence of institutions on actors) (Hodgson, 2000). As Gonzalez and Healey (2005) mention, institutional analysis focuses on interactions, not as a one-way relation, but as in interactive processes that are "both shaped by their institutional inheritance and help shape it, in mutually constitutive and generative processes" (p. 2058). According to Healey (1999), the forces structuring actor-relations are both formed and changed by "processes of acting, seeing and knowing" (p.113).

Old institutional theory provides the main theoretical basis for this research's conceptual framework, although some insights on the role of embedded rules were adopted from the assumptions of sociological-organizational perspective in new institutionalism. It is a useful theory for exploring the possibility that in the PPP formulation process solutions and opportunities may be in actors' capacity to adjust and change their own interactions in the process, which has limited relevance in the other theoretical approaches reviewed in this chapter. Old institutional theory focuses more explicitly on the dialectic and dynamic influence of formal and informal actors' interactions on institutions and vice-versa.

The approach adopted is in line with *social constructivist new institutionalism* (Coaffee & Healey, 2003; González & Healey, 2005; Healey, 2007) that relates to the perspectives of *new economic sociology* (Granovetter, 1985, 1992), *old institutional sociology* (Selznick, 1996; Stinchcombe, 1997), as well as to the *structuration theory* of Giddens (1984). In the field of planning, even though Healey's (1999, 2006, 2007) perspective is sometimes characterized as sociological new institutionalist, she clearly expresses old institutionalist tendencies, especially when she acknowledges her social-constructivist position, and argues, from a planning perspective, that "the systemic relations within an urban region cannot thus be taken for granted" and that "systems are not given, but are made, in a complex interaction between the imaginary and the material world" and constituted in social relations embedded in particular social contexts (p. 113).

#### **a. The interaction between actor-relations and institutions**

The emphasis of old institutionalism on social dynamics indicates its orientation toward the analysis of social institutions, which are manmade and changeable (Samuels, 1995). Under this approach, institutions cannot be merely considered a boundary in which rational actors make optimal and individualist decisions based on their intrinsic tastes, independent from the rules and resources that are present in the social networks surrounding them (Granovetter, 1992; Hodgson, 2006). The unit of analysis of old institutional theory is the network of individuals embedded in a social context, in which social, cultural and political factors can shape actors' preferences and behaviour, but can also be influenced by social actors (Cole, Cameron & Edwards, 1991; Dugger, 1979; Granovetter, 1992; Hodgson, 2006). This perspective is not possible under the methodological individualism of rational choice approach or under the "oversocialized" perspective of the sociological-organizational strand (Granovetter, 1985, p. 483; 1992).

Old institutionalists do not accept the assumption of institutions as autonomous, emerging automatically in response to needs and operating independently of human action and control, which is the determinism argument of the sociological-organizational perspective (Granovetter, 1992; Samuels, 1995). On the contrary, they emphasize that institutions are socially constructed and not inevitable, and that human action should always be situated in their social context and not analyzed simply based on the intentions of actors (Granovetter, 1990). In line with old institutionalism and from an organizational perspective, Scott (2004) argues that a discussion about institutions should not focus solely on their institutional effects on individuals, but on the processes that reflect the

interactions between actors in the social construction of institutions, which, in turn, influence the behaviour of actors. He argues that as actors' behaviour and motives are constructed, actors also have the potential for reconstructing the rules, norms and beliefs that guide their actions (W. Scott, 2004, p. 15).

The influence of institutions on individual action is often referred in the rational choice literature on institutional theory as regulative or bounding, in which institutions constrain or regularize self-interested behaviour; or cultural-cognitive, in which compliance with external cultural frameworks that shape behaviour are followed because they are 'taken for granted' as the way to do things (Dequech, 2002; W. Scott, 2004). On the other hand, some authors criticize the cultural-cognition role, by saying that under this perspective actors cannot develop different way of acting because of institutionalized constraints on thinking (Lizardo, 2010, p. 3) and "adhere slavishly to a script written for them by the particular intersection of social categories that they happen to occupy" (Granovetter 1985, p. 487), overlooking the fact that institutions are also social constructions. According to new sociological institutionalism, once individuals' social class, sector or society is identified, their behaviour is automatic presumed because they are considered "oversocialized" (Granovetter, 1985, p. 483), making the study of on-going social relations irrelevant.

Consequently, in contrast to the regulative/bounding and cultural-cognitive perspectives, the approach adopted for this research is that of the normative role of institutions, in which the formal and informal normative systems that constrain social behaviour also empower and enable social action (W. Scott, 2004). From this perspective, humans are seen as "creative learners, actively adjusting and adapting to new situations", being able to make choices within their structured and social embeddedness, and, in turn, maintaining, modifying or transforming the structural forces that shape their lives (Healey, 1999, p. 114). Based on the normative perspective mainly adopted by old institutionalists, "institutions exhibit an inherent duality: they both arise from and constrain social action", which is different from the regulative or cultural-cognitive roles that focus on "institution's capacity to constrain" (Barley & Tolbert, 1997, p. 95).

In accordance with old institutionalism, for institutions to become visible, it is necessary the dynamic process of institution design or building, not as in a process that operate in its own, but in a dynamic and social process of interaction in which people build and run institutions (Stinchcombe, 1997). As Granovetter (1992) and Barley and Tolbert (1997) argue, institutions are socially constructed and maintained by the on-going

networks of inter-personal relations. For Broom and Selznick (1973), the process of institution building can be defined as "the emergence of orderly, stable, socially integrating patterns, out of unstable, loosely organized, or narrowly technical activities" (p. 232). Ring and Van de Ven (1994) argue that institutions are a result of the interactions among organizations that unfold to shape and modify the terms of those relations over time. For Alexander (2005, 2006), institutional design is the production and reproduction of institutions as a result of collective interactive processes in a reflexive-dialogic way, aimed at the agents' own institutional context through processes of 'microconstitutional choice' as well as 'innovative intentionality'.

#### **a. The role of external forces: addressing limitations of old institutional theory**

In addition to the observations previously discussed, according to some advocates of old institutional theory, the focus of an institutional analysis should not only be placed on the influence of actor-relations on institutions and vice-versa, but also on how external forces impact the formal and informal dynamics of actors' interactions in the production and reproduction of the structures and institutions. Selznick's (1996) argues that the emergence of institutions is traced from processes and strategies of interaction and adaptation, but also as responses to internal and external environments (p. 271). As Hodgson (1998) argues, institutions are formed through the interaction of individuals, whose purposes or preferences are also shaped by socio-economic conditions. For Healey (2007) and González and Healey (2005), the emphasis of institutional analyses in urban planning should be placed on the contextual interplay between exogenous and endogenous forces, in which the former refer to contingent external forces "arising from economic dynamics, political changes or environmental pressures" (Healey, 2007, p.67), while the latter represent the active role of agency as creative transformers in changing institutions through social interactions, innovations, tensions, contradictions and struggles. From a social constructivist perspective, the influence of external forces on the internal formal and informal dynamics of relations is context specific. As Healey (2007) argues, the outcomes of the flow of complex events "are the situated product of inherently unpredictable encounters between many powerful driving forces and specific contingencies" (p. 127).

Nevertheless, the inclusion of external forces in an old institutionalist theoretical framework is an often disregarded approach. Lowndes (2001), González and Healey (2005), Healey (2007) and Pierre (1999) acknowledge that institutional approaches seldom

combine formal and informal dynamics with the influence of external forces. As González and Healey (2005) assert, social constructivist (old) institutional theory lacks an explicit connection to wider driving forces which give exogenous momentum to endogenous dynamics. For Pierre (1999) and Lowndes (2001), an institutional approach must also account for the role of the political economy as wider forces. Pierre (1999) argues that “although institutional theory has become a leitmotiv in much of mainstream political science, the institutional dimension of urban politics remains unclear and ambiguous” (p. 373). For Huxley and Yiftachel (2000), approaches that focus on the ‘micro-processes’ of daily routines (which is the case of old institutional theory) can lead to detailed studies of practices and discourses “at the expense of wider social and economic contexts” (p. 333), especially failing to account for the contingent production of space (Yiftachel & Huxley, 2000, p. 910). They mention that understanding practices is important but these studies tend to “gloss over” contextual explorations of “material interests, of discourses and the constraints of the taken-for-grantedness of the world” (Huxley & Yiftachel, , p. 337). As a suggestion for improvement, Huxley and Yiftachel (2000) mention that a research must account for the context in which these practices take place, in terms of the local influence of wider structuring forces, as well as demonstrate the effects of such practices especially with respect to the objects under study (i.e. “spatial processes, land development, the built environment”) (p. 337).

Many authors also support this combination between external forces and internal dynamics to deal with the limitations of an institutional approach. As González and Healey (2005) and Healey (2007) argue, it is important to include in a framework based on institutional theory, which usually focus on processes and interactive dynamics, an element that covers the influence of a wider social context. Similarly, for Pierre (1999), a combination between the two perspectives is essential. He argues that theories of urban governance that focus on the urban political economy (or external forces as the term adopted in this research) can actually be complemented by institutional theoretical contributions:

[O]ne cannot understand urban governance unless these value dimensions are brought into the analysis. It is here that institutional theory (...) offers some analytical assistance. Although theories of governance conceptualize processes of public-private resource mobilization, institutional theory is thus a vehicle for

understanding the values and objectives that give these processes direction, objective, and meaning (p. 373).

In old institutional theory, however, the influence of external forces is not a working stimulus that simply structures and dictates actors' interactions in a system. According to González and Healey (2005), the interplay between exogenous forces and endogenous systemic forces is complex and lead to diverse changes which are contingent in time and space. They argue that this approach locates "policy actions and practices in geographically specific governance contexts" and connects "the phenomenology of micro-practices to wider structuring forces" (González & Healey, 2005, p. 2057).

This research, therefore, has made the attempt to account in the theoretical approach and conceptual framework (which will be presented in Chapter 5, next) for the limitations of using old institutional theory to explore actor-relations in the pre-tendering process of PPP formulation. The possible influence of external forces and of embedded (or taken-for-granted) assumptions brought also as external forces into contingent actors' interactions will be explored in addition to internal dynamics of relations, which is the focus of old institutional theory. In response to criticisms that theories of 'fine-grained' processes fail to consider "what is to be done about cities", the focus placed on actors' capacity and 'ways of thinking and acting' in the analysis of the case study will also be connected to the contingent external "causes, constraints, and substantive outcomes" (Fainstein, 2000, pp. 455-456) of decision-making with respect to the infrastructure PPP project under study (a city centre urban mobility project to be explained in Chapter 6). Furthermore, as it will become clearer in the Analysis Chapters (6, 7 and 8), to account for the spatial processes that may influence the built environment, an analysis of the specific technical aspects of the formulation of an infrastructure PPP project will be related to the contingent interactions and actor-relational dynamics.

### **4.3 Conclusion**

This research is interested in actor-relations in the process of PPP formulation. For this, it adopts insights from new institutional theory on the embeddedness of practices, opinions and expectations. Because only insights from the sociological-organizational strand are included in this research's theoretical and conceptual frameworks, hereafter new institutionalism will refer only to the sociological-organizational perspective. Although considering some new institutionalist insights, the conceptual framework presented in the

next chapter will mainly adopt a social constructivist perspective of old institutional theory, in which processes of reinforcement or overcoming of embedded assumptions and biases are possible through actor-relations in contingent ways. This research also adopts a social constructivist concept of institutions in which they represent contextually produced and reproduced practices, opinions and expectations of actors which influence them in their formal and informal social interactions. It also includes the possibility that external forces can influence the process of PPP formulation, but in contingent ways.

The selection of old institutionalism as the main theory of this research resulted from a review of broad theoretical approaches. Theories were considered based on their overall tools for exploring the insights obtained from the review of the literature on Public-Private Partnerships (external forces and dynamics of actor-relations). Based on the general pros and cons of a structural approach and of a perspective focusing on actor-relations, old institutional theory was selected as adequate for an in-depth exploration of actor-relations, but as long as its limitations are addressed. This was attempted in the last section by accounting for the role of external forces and also earlier in this chapter, when assumptions of new institutionalism on the embeddedness of 'ways of thinking and acting' were introduced as part of the theoretical framework.

Both new and old approaches to institutional theory were considered. However, in new institutionalism, the rational choice approach introduces assumptions that are not in line with this research, such as focus on outcomes and not processes, and actors with fixed preferences and opinions. On the other hand, the sociological-organizational perspective offers important insights which can complement the theory chosen for this research. With respect to old institutional theory, it is useful for exploring the influence of institutions on actor-relations and vice-versa. Yet, its limitations must be acknowledged and addressed, and the effort will also be made in the next chapter that presents the conceptual framework. It will be used to operationalize the theoretical ideas discussed in this chapter in order to guide the research design of Chapter 6 and the analytical process in Chapters 7, 8 and 9. The framework focuses on the processes in which shared practices, opinions, perceptions and expectations are produced and reproduced, reflecting actors as active learners and the institutions that influence the process of PPP formulation. Additionally, the institutional relations between public and private actors are considered to happen in both formal and informal dynamic interactions, but also under the influence of contingent external forces and embedded 'ways of thinking and acting'.

## **Chapter 5 - Towards a Conceptual Framework**

### **5.1 Introduction**

#### **5.1.1 The social system**

The focus of this conceptual framework is to understand how actors mobilize and overcome assumptions and biases in their interactions, the influence of external forces, the networks linking actors, the areas of agreement and common interests upon which collaboration and reconciliation are developed, as well as the disagreements and diversity of perspectives that can make this process difficult. In this research, these processes are assumed to happen in the social system.

Different from new institutionalisms, old institutional theory highlights the role of actors embedded in social relations. As Granovetter (1985) argues, embeddedness is “the argument that the behaviour and institutions to be analyzed are so constrained by ongoing social relations that to construe them as independent is a grievous misunderstanding” (p. 482). For Granovetter (1992), institutions “are constructed by individuals whose action is both facilitated and constrained by the structure and resources available in social networks in which they are embedded”(p.7). Granovetter calls ‘social relations’ or ‘social networks’ what Giddens (1984) calls ‘social systems’. This research adopts Giddens’ (1984) concept of social system in which actors’ interactions are embedded in the context of their own social relations.

Giddens’ (1984) structuration theory is in line with old institutionalism because he sees institutions and agency as mutually constitutive and rejects the dualism that separates structure and agency (Jessop, 2001). One of the main innovations in his model is the introduction of time and space into institutional analysis (Jessop, 2001). According to Giddens (1984), in the social system, context matters. It is also in the social system that institutions become identifiable, which are considered the system’s concrete features. For Giddens (1984), institutions are practices situated in time and space which reflect the use of abstract rules and resources in the system. This contextual perspective of a system is also adopted by González and Healey (2005), influenced by the Giddens’ work. For Giddens (1984), social elements only have virtual existence; they are abstract unless instantiated in the systemic time and space. Giddens’ (1984) social system is composed of the context-specific activities of human agents, which are produced and reproduced in interactions. For this research, therefore, it is inside the contextual social system that actors undertake the



formulation of the PPP project. The central focus of the conceptual framework is on the contextual formal and informal relations that lead to the construction and enactment of a 'systemic institutional arrangement' which influence actors' pre-tendering interactions. The framework also considers that individuals can change and reinforce 'ways of thinking and acting', and also be shaped by these aspects in their relations for the construction and enactment of a 'systemic institutional arrangement'.

### **5.1.2 Research questions**

The primary aim of this research is to understand why many cases of PPP project formulation are not finishing the pre-tendering stage based on the Procedure for Request of Interest (PRI). For this, it aims to unpack the yet unclear actor-relations in the process, by focusing on the formulation of an infrastructure PPP project that completed the pre-tendering stage, but in more complicated circumstances, since it lacked the elements of the Brazil PPP Framework prior to actors' engagement. From this analysis, the research also aims to inform recommendations for the PRI pre-tendering formulation process of infrastructure PPP projects in Brazil. Considering these observations, the conceptual framework to be discussed will be used to answer the following research questions (linked to a set of sub-questions to facilitate the analysis). The objective of identifying actors and their relations in the formulation process will also be addressed through the following:

1. How did actors' construct and enact a 'systemic institutional arrangement' through their relations? How did it influence actors in the completion of the PPP formulation process in the PRI pre-tendering stage?
  - a. How were actors and their relations influenced by existing 'ways of thinking and acting'? How did they mobilize or overcome existing ways?
  - b. How were actors and their relations influenced by new and innovative 'ways of thinking and acting'?
  - c. How did actors and their relations influence the process?
  - d. How did external forces influence the process?
2. What are the lessons learned for the formulation of infrastructure PPP projects in Brazil in the PRI pre-tendering stage?
  - a. What are important aspects that have been neglected by the Brazil PPP Framework?
  - b. What are important aspects about the Brazil PPP Framework that were neglected in the process? Why? How could they be better acknowledged?

### 5.1.3 Introduction to the conceptual framework

This research will use a social constructivist approach in line with old institutional theory for analyzing actor-relations in the process of PPP formulation. The conceptual approach for conducting the research is interested in a perspective that accounts for the influence of internal dynamics as well as external forces in the process. It is composed of two main aspects: systemic processes and analytical concepts. It considers that three processes happen simultaneously inside the social system for the formulation of a PPP project. The systemic processes of the conceptual framework are:

1. The production and reproduction of a 'systemic institutional arrangement';
2. The reproduction of embedded 'ways of thinking and acting' (assumptions and biases);
3. The production and reproduction of innovative 'ways of thinking and acting' (overcoming of assumptions and biases).

Since this conceptual framework will not be used to analyze these systemic processes individually, it accounts for the interplay between them. This dynamic interplay sets the stage for actor-relations in the processes of production and reproduction of the 'systemic institutional arrangement' in the completion of the formulation of PPP project. The following analytical concepts will also be considered simultaneously for exploring the social systemic processes, which are explained in the next section:

- The influence of external forces;
- Contextual dynamics of formal and informal actor-relations;
- 'Ways of thinking and acting'.

A diagram of the conceptual framework for this research is presented in Figure 2, next. It demonstrates the connection between processes and analytical concepts in the systemic institutional arrangement, which is assumed to result from interplay of actor-relations in the production and reproduction of 'ways of thinking and acting' for the PRI pre-tendering formulation of an infrastructure PPP project. By exploring actor-relations based on the conceptual framework proposed here, this research intends to foster a better understanding of the complexities involved in the interactions by eliciting actors' 'ways of thinking and acting' in terms of needs, interests, perceptions, opinions and expectations, attitudes, skills and strategies, as well as embedded biases emerging from previous forms of interactions that can hamper the process of negotiation, and innovative practices that influence the PPP formulation process (Healey, 2007).

## 5.2 Diagram of the Conceptual Framework

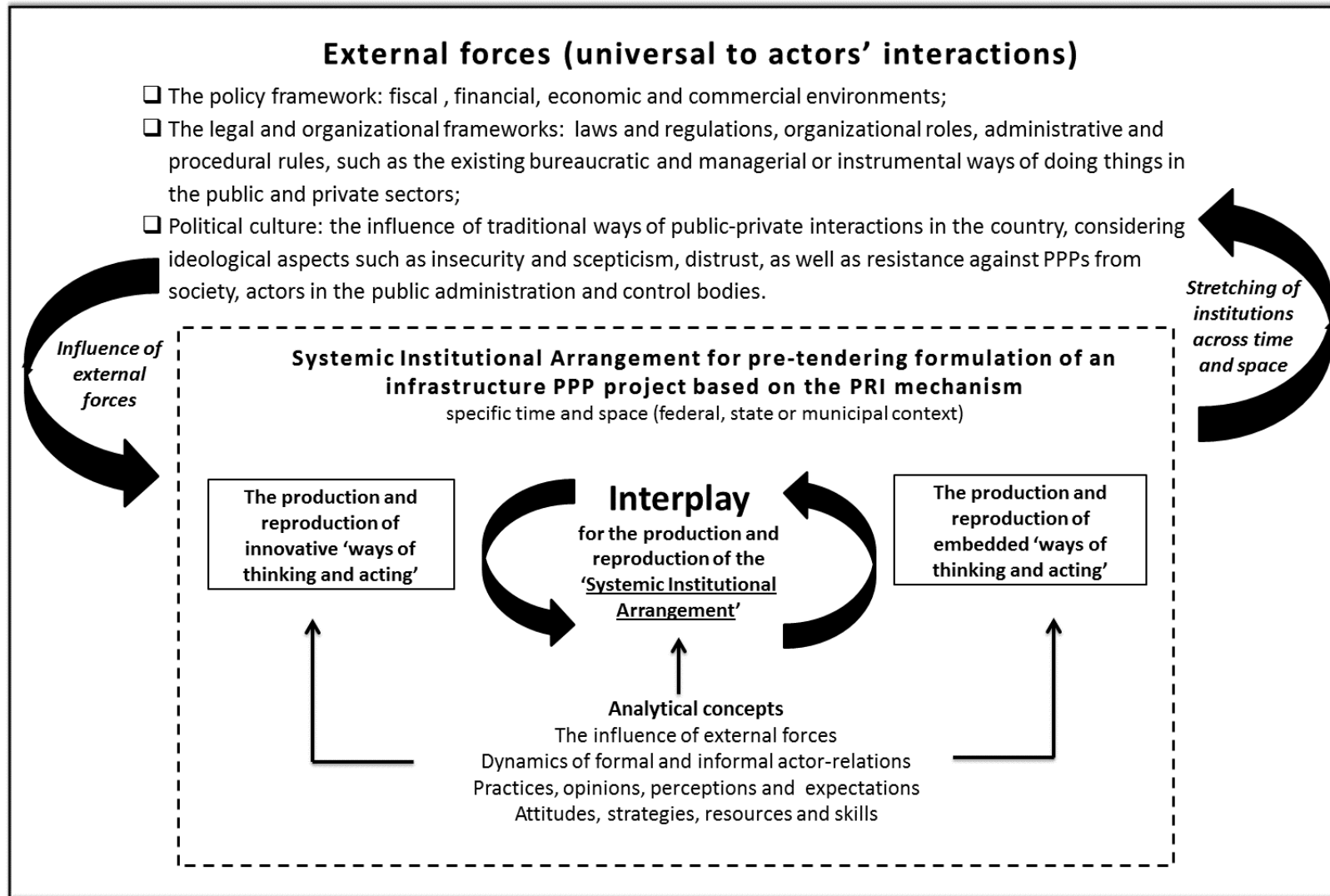


Figure 2 - Diagram of Conceptual Framework

In this chapter, the analytical concepts are explained first in the following order: external forces, the contextual dynamics of actor-relations and 'ways of thinking and acting'. The following section provides explanations of three systemic processes which will be analyzed in this research: the construction of a 'systemic institutional arrangement', the reproduction of embedded assumptions and biases and the production of innovative 'ways of thinking and acting'. This section will also consider how lessons learned from the research for informed recommendations will be derived, which requires clarification on how institutions from a system are assumed capable of stretching across time and space to different contexts as indicated in Figure 2.

### **5.3 Analytical concepts**

#### **5.3.1 External forces**

In this research, the concept of external forces in the system is similar to Giddens' (1984) definition of structure. He argues that "structure has no existence independent of the knowledge that agents have about what they do in their day-to-day activity" (p. 26). Giddens' structure will be called in this research the external forces that influence the social system in particular ways specific to a context. For the purposes of this research, external forces are assumed to be empirically observable only in time and space, and only become visible constraints or enablers within the social system if enacted by actors in their interactions. It is through the interactions among actors in practice within the social system that external forces and institutions are revealed or produced. This conceptual framework assumes the abstraction of external forces, which will only be seen within the systemic context of production and reproduction of the 'systemic institutional arrangement' and institutions. These external forces are also considered universal and available in a different time and space for enactment in other systems through formal and informal dynamics of actor-relations specific to a context (Moos & Dear, 1986, p. 240).

It is important to take external forces into account in the analysis because they may represent problems and opportunities for internal dynamics of actor-relations in the pre-tendering process of PPP project formulation as suggested in the previous chapter of literature review on Public-Private Partnerships (PPPs). In this research, therefore, the analysis of external forces considers that the system is embedded in a broader scenario, which can influence the PPP formulation process in its concrete time and space (Lowndes, 2001). Therefore, evaluation of the wider context will include an analysis of the exogenous

driving forces that trigger and create obstacles and opportunities for internal systemic processes and leads to transformation and innovation pressures (Healey, 2007). As Lowndes (2001) argues, external forces are normatively and historically embedded and include aspects such as electoral systems, tax and benefit systems, cabinet decision-making, arrangements for budgeting or policy-making, intergovernmental relationships, or contracting rules (p. 1957). In this research, these forces are expressed through the contextual influence of formal structures and procedures, as well as the dynamics of political, social and economic activity, shifts in socio-cultural activities and aspirations and initiatives arising from civil society mobilisation (Healey, 2007), but also through “tacit understandings and conventions that span organisational boundaries—both inside and outside the public sector” (Lowndes, 2001, p. 1957). These tacit understandings represent concepts of embedded ‘ways of thinking and acting’ which were obtained as insights from new institutional theory. These will be discussed later in this chapter.

This conceptual framework consider as external forces the aspects suggested by the review of literature on Public-Private Partnerships (PPPs). Four of these elements are also considered in the Brazil PPP Framework, which has failed to guide many pre-tendering processes of PPP formulation towards completion. These include policy, legal, organizational and strategic elements. Another aspect is political culture, which is the missing element in the Brazil PPP Framework. The following Table 4 summarizes the external forces that will be considered in this research, making a parallel with the elements of the Brazil PPP Framework. The influence of external forces will be analyzed in terms of their embeddedness in the social systemic context in which actors engage for the PPP formulation.

Table 4 - *External forces (Conceptual Framework)*

External forces in the conceptual framework	Existing Elements of the Brazil PPP Framework used as initial drivers for PRI process of PPP formulation
The fiscal, financial, economic and commercial scenario for public-private partnerships	<u>Policy Framework</u> : clear influential environment promoted for use of PPP policy instrument in specific sectors as expressed through political will, economic stimulus, favourable investment scenario
Legal and regulatory, procedural, organizational, administrative and strategic elements, including the existing bureaucratic and managerial or instrumental 'ways of thinking and acting' in the public and private sectors	<p><u>Legal Framework</u>: existing PPP legislation (law and decrees) that sets legal boundaries, conditions, criteria and standardized procedures for the structuring of PPP projects through PRI mechanism</p> <p><u>Organizational Framework</u>: organizational frameworks in place, generally created by PPP Decrees and represented by Managing Councils (or Committees) and PPP Units (or Technical Groups). Seminars and trainings promoted, teams with specialized (sectoral) knowledge, background and experience in PPPs</p> <p><u>Strategic Framework</u>: PRI decrees in place with pre-designed strategic guidelines, as well as availability of manuals of best practices</p>
Political culture: the influence of traditional ways of public-private interactions in the country, considering ideological aspects such as insecurity and scepticism, distrust, as well as resistance against PPPs from society, media and actors in the public administration and external control bodies.	Non-existing element in the Brazil PPP Framework

### **5.3.2 Dynamics of formal and informal actor-relations**

In this research an analysis of the formal and informal dynamics of actor-relations in the formulation of PPP projects is based on the idea that even though some actor-relations may be based on formal contracts, the levels of commitment among them go beyond contractual arrangements, including actively constructed relations and mutual dependency (Bovaird, 2004). In Brazil, despite the existence of PPP legislations, project finance and other structuring elements setting legal and network boundaries, there is no legal requirement binding actors in the PRI pre-tendering stage. It is mainly an informal process of interactions and public and private actors may cancel the process at any time. Therefore, during the dynamic and complex interactions of the informal PRI pre-tendering stage, several stakeholders construct circumstances that maintain them engaged or not in these interactions for PPP formulation. These may also operate as informal rules and conditions influencing their interactions.

The way the different stakeholders engage, as well as their permanence or not in the PRI process, relies on formal elements but also on their interdependencies and own creativity to construct the path that leads (or not) to the formulation of the PPP project, as well as on the influence of the external environment in which the interactions take place. As Peters (1998) mentions, institutions provide the grounds for interaction based on mutually agreed rules, shared values and common policy goals, which “may be promulgated formally, but more often there is a set of tacit understanding about the appropriate behaviour” (Peters, 1998, p.16). González and Healey (2005) also argue that institutions are “expressed in formal rules and structures, but also in informal norms and practices, in the rhythms and routines of daily life”, as actors are linked in formal and informal social arenas of collective action (p. 2058).

Therefore, this conceptual framework considers both formal and informal relational elements. Formal aspects include legally binding contracts with specific objectives and actions; while the informal elements include unenforceable agreements to cooperate in which actors build relations and share information based on aspects such as trust, motivation, commitment, collaboration and tolerance (McQuaid, 2000, p. 15). To understand informal arrangements, it is important to analyze the context in which actors take action, the kinds of interactions and expectations from others and the mechanisms that join actors together in on-going interactions (Klijn & Teisman, 2000; McQuaid, 2000). Consequently, the analytical concept of formal and informal actor-relations will allow the

contextual identification of actors involved in the process. Besides identifying “who” interacts with “who”, there will be an analysis of the reasons actors relate to each other, such as motivations and interests (“why”), as well as the strategies adopted (such as forming coalitions, attacking, supporting, challenging or opposing). It is important to mention that these links may reflect both positive (collaborative, cooperative) and negative (conflictual) relations. According to Klijn and Teisman (2000), to analyze a network of relations, it is important to understand its structure (actors and connections), preconceptions and rules that operate in the network, and conflicting assumptions. For Klijn and Teisman (2000), networks consist of all kinds of different relations, “some of them weak, some of them strong”, in which the weak relations can evolve into strong ones over time (p. 93).

The analytical concept of formal and informal relations has also a dynamic sense which is important for an analysis of change in actors-relations, assumptions and biases. This is essential for understanding how actors’ embedded assumptions and biases influence their relations in face of pressures for change and for innovation in practices, opinions, perceptions and expectations. For this, it will be considered the way they draw on such assumptions to form their strategies of interaction, and the extent to which these assumptions foster or hamper relations and negotiations. Klijn and Teisman (2000) argue that for existing fear of exploitation and opportunism, for example, some actors may not decide to interact with each other.

It will also be addressed the extent to which actors’ biases and assumptions are overcome or reinforced in their relations, considering whether actors’ common grounds and agreement on interests influence changes in their perceptions, expectations and opinions. According to Healey (2007), it is not only important to address the embedded frames that structure how people make sense of their relational world, but also whether and how these frames (assumptions and biases) are questioned and changed (innovative practices and opinions). Consequently, in view of a scenario of interaction reflected in the interplay of systemic processes, there is the reinforcement of embedded assumptions or production of innovative ones. Actors’ strategies may be initially influenced by embedded relational biases and assumptions, but during the interaction actors may either reinforce these embedded ‘ways of thinking and acting’ or may learn to challenge and change them in innovative ways (Healey, 2007; Lowndes & Skelcher, 1998).

Consequently, this dynamic analytical concept will be useful for exploring the possibility that actors may make adjustments in their assumptions as they build coalitions



and mobilize support, which may result in changing perceptions about each other, on the recognition of the value of integration, and on the adjustments of cultural practices (Keast et al., 2004). These considerations lead to a concern over the extent to which changes in assumptions affect the negotiations between actors. This analysis will focus on the way changes or adjustments in assumptions, as actors' reinforce or overcome biases, contribute to areas of agreement and common interests that may lead to progress in the process of PPP formulation, as well as the way they result in diverging interests and areas of disagreement that could hamper the process. Although actors have their own individual perspectives, they can acquire a new set of values and a new way of thinking that inspire them to work together for a common mission (Keast et al., 2004). For Keast et al. (2004), even though actors might initially refrain from engaging with other actors, based on perceptions that may interfere with their relations (i.e. distrust, disagreements, frustrations, etc.), these perceptions may eventually change allowing actors to collaborate. This analytical concept, therefore, will be mainly used to understand whether actors' capacity to reach agreements and reconcile interests is a result of adjustments in their perceptions, opinions and expectations about the PPP formulation process, their relations and each other.

### **5.3.3 'Ways of thinking and acting'**

In her approach to transformational governance processes, Healey (2004) mentions that an analysis of 'ways of thinking and ways of acting' focus attention on actors, interactive practices and networks, as well as on the formation and dissemination of discourses and practices, the relation between deeper cultural values and specific episodes of governance, and the interaction of the activities of specific actors and wider structuring forces (p. 14). Based on these observations, this research adopts the concept of 'ways of thinking and acting' in which "ways of dealing with old and new challenges interact in multiple ways and at all kinds of scales, in a complex landscape of interacting social trajectories" (Healey, 2005, p. 303). It also considers that this complexity creates challenges as people who are used to relatively fixed ways of acting have to adapt to new situations (González & Healey, 2005). In the conceptual framework 'ways of thinking and acting' are represented by two analytical concepts:

- Practices, opinions, perceptions and expectations;
- Attitudes, strategies, resources and skills (reflected in practices)

### Practices, opinions, perceptions and expectations

In this research, the processes of production and reproduction of institutions as shared practices, opinions, perceptions and expectations through actors' interactions is based on Giddens' (1984) idea of practical and discursive consciousness. Garud, Hardy and Maguire (2007) say that "actors are knowledgeable agents with a capacity to reflect and act in ways other than those prescribed by taken-for-granted social rules and technological artifacts" (p. 961). For this research, therefore, actors' capacity to reflect and act will not only be considered in terms of discursive explanation of opinions and expectations, but also practice expressions. New institutionalists argue that people are not aware or conscious of their behaviour if there is no justification, reflection or explanation on their practices (March & Olsen, 2006 544). However, awareness is not only demonstrated through discursively expressed opinions and expectations, but also through practices. Giddens (1984) argues that "all human beings are highly learned in respect of knowledge which they possess, and apply, in the production and reproduction of day-to-day social encounters" and that "the vast bulk of such knowledge is practical rather than theoretical in character" (p. 22). From a similar perspective, Pescosolido (1992) asserts that the construction of the 'self' through scripts can be combined with people consciously choosing to following scripts through their practices. For her, "people are not unconscious; they are knowledgeable, skilful actors with 'practical consciousness' that allows them to both improvise and routinize" (Pescosolido, 1992, p. 1103). Based on Giddens' work, Dyck and Kearns (2006) define discursive consciousness as "what people can put into words about their actions" and practical consciousness as "what actors know about how to do things in a variety of contexts of social life, but may not be able to put into words" (p. 87). Consequently, actors are viewed as "creative learners, actively adjusting and adapting to new situations" (Healey, 1999, p. 114), by reflecting and giving justifications and explanations for their practices (discursive) or by simply enacting actions during interactions (practical).

It is also important to consider that practical and discursive consciousness may lead to unintended institutionalization processes because human knowledgeability is always bounded, that is, actors are not always aware of the consequences of the activities in which they engage (Giddens, 1984). Therefore, in this research systemic processes will be explored based on the assumption that actors are practically and/or discursively conscious in the production and reproduction or practices, opinions, perceptions and expectations for

the construction and enactment of the 'systemic institutional arrangement' in the pre-tendering stage of PPP formulation.

#### Attitudes, strategies, resources and skills

This research will also use in the analysis two sets of factors from the literature on 'capacity' for exploring 'ways of thinking and acting'. It adopts the definition proposed by Brinkerhoff and Morgan (2010) and Morgan (2006) and Land, Hauck and Baser (2009), in which capacity is the combination of attitudes, resources, strategies and skills mobilized for a certain task. Some may be existing 'ways of acting and doing things', while others may be endogenously created in social processes.

One set include hard elements in terms of formal rules and conditions, rigid organizational structures, and instrumental or bureaucratic strategies, which can also be called functional, technical/technocratic and hierarchical. These hard aspects are in line with the elements of the Brazil PPP Framework. As explained in Chapter 2, since similar aspects have been widely used for the formulation of PPPs in states and municipalities in Brazil, it is important to acknowledge that these elements may exert an influence in the way actors' interactions take place for the formulation of PPPs around the country, including in the case study used for this research.

The other set refers to generative, non-technical and less instrumental factors, which are not considered in the Brazil PPP Framework, but suggested by the literature review on PPPs. In this second set there is a higher focus on socially constructed rules, processes as outcomes and on the 'capacity of what', instead of 'capacity for which outcomes' (Morgan, 2006, p. 17). Brinkerhoff and Morgan (2010) explain that the capacity related to the second set can be called 'emergent', as in undirected processes of collective action leading to increased capacity. The two sets of 'capacity' factors are summarized in the following Table 5. They will help to make a distinction between hard and soft elements influencing actor-relations in the process of PPP formulation.

Table 5 - *Capacity factors: hard and soft elements*<sup>2</sup>

	<b>Hard elements: instrumental and/or bureaucratic</b>	<b>Soft elements: generative or emergent</b>
<b>Strategic approach</b>	Based on formal plans: clear definition of inputs, actions, outputs and outcomes and instrumental execution of standard procedures	Not formally designed and based on learning and interaction
<b>Dynamics of strategy</b>	Rigid, hierarchical, formal More outcome-oriented Capacity is inputs as means to reach outcomes with efficiency and effectiveness; the use of incentive and external pressures to increase accountability and obtain value for money of results	Flexible, non-hierarchical , informal More process-oriented Capacity is ability to act over resistance, to overcome constraints and to develop commitment to move forward and obtain results
<b>Coordination skills</b>	Management by control; training and teaching	Transformational leadership: symbolic and values-based incentives to shape commitment and motivation; bridging and linking (developing formal and informal alliances)
<b>Resources</b>	Technical know-how, 'best practices', plans, procedures, structures, technologies, financial assets and resources	Motivation, commitment, trust, tolerance, confidence, security, process ownership, relationships, legitimacy
<b>Attitudes towards change</b>	Focus on resources and activities that can be used for change. It addresses lack of resources and trainings, technical skills, equipment, knowledge and technologies	Resilience, confidence, innovation, collaboration, adaptiveness, courage, imagination, aspiration, self-perception

<sup>2</sup> Note. Adapted from Land, T., Hauck, V., & Baser., H. (2009). *Capacity Change and Performance: Capacity development: Between planned interventions and emergent processes. Implications for development cooperation*. Policy Management Brief n. 22. Maastricht: ECDPM; and from Morgan, P. (2006). The concept of capacity. *Study on Capacity, Change and Performance*, European Centre for Development Policy Management (ECDPM). Adapted with permission.

## **5.4 Systemic processes**

This conceptual framework includes three systemic process that will be simultaneously explored in the analysis: (1) the production and reproduction of a 'systemic institutional arrangement' that influence actor-relations in the PPP formulation process; (2) the reproduction of embedded 'ways of thinking and acting' (assumptions and biases); and (3) the production and reproduction of innovative 'ways of thinking and acting' (overcoming of embedded assumptions and biases). These are explained next.

### **5.4.1 Systemic process 1: production and reproduction of a 'Systemic Institutional Arrangement'**

For this research, the 'institutional arrangement' is different from the PPP Framework that has been adopted in Brazil to guide the PPP formulation based on the Procedure for Request of Interest (PRI) mechanism. The institutional arrangement is systemic, socially constructed and depends on context, while the PPP Framework is universal and has been used as an external influence to guide different PRI cases of PPP formulation in Brazil. This approach for the institutional arrangement has been adopted in order to highlight the systemic aspects that influence actor-relations for the formulation of a PPP project. In this research, the analysis of the production and enactment of the 'systemic institutional arrangement' will be in terms of the four elements of the Brazil PPP Framework, but from a social constructivist perspective. The elements of the 'systemic institutional arrangement' include: (1) policy arrangement; (2) legal arrangement; (3) organizational arrangement; and (4) strategic arrangement.

The 'systemic institutional arrangement' is assumed to be a concrete and observable set of rules and resources that directly influence activities in the context of the social system (Edvardsson, Tronvoll & Gruber, 2011). Since actors are seen in this research as capable of enacting but also of designing institutions in their interactions, these are both considered observable and socially constructed in specific systemic contexts. This research adopts a dialectic approach between actor-relations and institutions in which it does not attempt to give primacy to one or the other. It assumes from the start that the 'systemic institutional arrangement' and actors through their relations co-create and co-influence each other.

Moreover, in this research the construction of the 'systemic institutional arrangement' by actors in their interactions depends on the production and reproduction

of embedded and innovative 'ways of thinking and acting', and on how they influence actors in the process of PPP formulation. Institutions here both influence the construction of institutional arrangement and reflect its application in practice. The conceptual framework adopts the assumption proposed by Giddens (1994) in which institutions are properties of the 'systemic institutional arrangement' reflected in the social actor-relations. Therefore, the focus of the analysis will be on the interplay in social processes between external forces and formal and informal actor-relations that lead to a 'systemic institutional arrangement', which in turn influence these social processes (Coaffee & Healey, 2003), but also in such a way that the arrangement is constantly made and transformed in these dynamics of social relations (Healey, 1999, 2006).

For the production and reproduction of the 'systemic institutional arrangement', two other processes will be simultaneously explored in this research. One is the routinized or cognitive process in the system in which embedded 'ways of thinking and acting' are reproduced in the interactions between actors. The other involves the processes in which innovative ways are produced and reproduced, leading to the overcoming of embedded assumptions and biases and to the creation of new 'ways of thinking and acting'. These are explained next.

#### **5.4.2 Systemic process 2: production and reproduction of embedded 'ways of thinking and acting' (assumptions and biases)**

The processes of production and reproduction of embedded assumptions and biases in actor-relations are a reflection of actors' internalized cultural and relational 'ways of thinking and acting', but in a socially constructed way. These processes represent symbolic, procedural or standard responses; but they are still considered socially constructed in this framework because the institutional action that reflects their application in the system is specific to time and space. Although the new institutional literature consider that actors incorporate into practice internalized taken for granted scripts from existing fields, old institutional assumptions makes it possible to view actors as interpreters of ambiguous symbols and constructors of meaning (Garud et al., 2007, p. 959).

These routinized-type of processes have already been discussed in the previous chapter in the sociological-organizational section of new institutional theory. It was explained that these processes represent the production and reproduction of institutional myths and rules of appropriateness. In this conceptual framework, the introduction of

routinized myths and rules in the contextual system can be done through actors' decisions to follow existing standard responses with the perception that they give legitimacy or guarantee survival and successful behaviour. Therefore, in this research, the concept of legitimacy is seen as "both a source of inertia and a summons to justify particular forms and practices" (Selznick, 1996, p. 273). The routinized processes may also refer to rituals of conformity to wider forces due to perceptions of threat of coercion or formal sanctions; as well as to the adoption of myths from the external environment that borrows the source of practices from others in order to define the conditions and methods of internal work (DiMaggio & Powell, 1991). Actors can also choose to follow existing scripts because they are perceived as the appropriate thing to do, based on embedded rules and practices that specify what is normal, what must be expected and can be relied upon, and what makes sense in a specific context (Olsen, 2007).

However, different from the new institutional approach, this research does not adopt the assumption that cultural cognition leads to a direct process of imitation; instead, it assumes that innovation takes place especially because of contextual differences. This research, therefore, will analyse the production and reproduction of shared routinized or cognitive 'ways of thinking and acting' internalized by actors and expressed in their relations, but in a socially constructed way. Embedded assumptions and biases could be a result of past experiences, events, relations or predominant modes of governance. They could also include embedded cultural practices such as instrumental, hierarchical, contractual or bureaucratic 'ways of acting', preconceptions and discourses such as inefficiency of the state, inability to trust the other actor, private sector's greed, etc. It is also important to identify possible existing 'pockets of trust' between actors that have worked together in the past, which may influence the process of interaction (Keast et al., 2004).

Embedded assumptions may constrain innovation attempts that challenge mainstream practices, creating difficulties for interactions and spread of new ideas through negotiations for the process of PPP formulation (Healey, 2004). On the other hand, since such assumptions are not fixed, they may be adapted and re-formulated as a result of actors' interactions in their struggle during the process, influencing the promotion and flow of new discourses and practices across the network of actors (Healey, 2006).

In summary, this conceptual framework assumes that actors may draw on embedded cultural underpinnings (practices and discourse) and relational assumptions to

engage in relations with other actors in face of their willingness to complete the PRI pre-tendering process. They may refer to these assumptions in order to decide what to do, who to approach, why approach and what strategies to use (Ring & Van de Ven, 1994). It is also assumed in this research that even if actors have previously developed expectations and perceptions about each other and about the PPP formulation process (i.e. based on past experiences and embedded cultural practices), these assumptions are not necessarily introduced into the system in the original format, but may continuously change as actors engage in new interactions.

#### **5.4.3 Systemic process 3: production and reproduction of innovative ‘ways of thinking and acting’ (overcoming of embedded assumptions and biases)**

In the conceptual framework, the dynamics of interactions may also lead to innovative ‘ways of thinking and acting’. The emergence of pressures for innovation are imposed on mainstream practices and their main characteristics, which may arise from tensions, contradictions, inventions and struggles within internal dynamics of interactions or from the influence of wider external forces (Healey, 2007).

In this research, the analysis of these processes of innovation will focus on several aspects: the identification of new actors proposing new ideas, new arenas and forms of interaction and communication; the analysis of new strategies and emergent discourses and practices for the elaboration of PPP projects, which reflect actors’ new discourses and attempts to change practices (explicitly or implicitly) in their interactions; the identification of the challenges imposed on mainstream ‘ways of thinking and acting’ such as bureaucratic, traditional, instrumental and managerial approaches to politics, policies and procedures; and, finally, the analysis of the influence of wider external forces arising from economic, fiscal, financial and regulatory dynamics and political aspects, which may include fiscal problems, changes imposed by the national government, society, control bodies, etc. (Coaffee & Healey, 2003; González & Healey, 2005; Healey, 2006, 2007).

An important concept that refers to endogenous institutional change, which may apply to the introduction of innovative practices, is the idea of ‘institutional entrepreneurship’ undertaken by embedded agency in an institutional context (Garud et al., 2007; Leca, Battilana & Boxenbaum, 2008). For this research, the concept of entrepreneur agency is represented by actor-relations and/or actors involved in the introduction of innovative practices. The conceptual framework adopts a definition of institutional



entrepreneurship in which actors have the capacity to innovate through their relations even if their own beliefs and actions are influenced by the institutional environment they wish to change (Leca et al., 2008, p. 4 ). Although Garud et al. (2007) argues that it is unlikely that entrepreneurial outcomes and processes will be readily embraced by actors committed to existing ways of acting in a particular field” (p. 960), this research will also account for the possibility that innovative practices can become well accepted and reproduced through actor-relations leading to the overcoming of embedded assumptions and biases. Mutch (2007) and Leca et al. (2008) argue that the link between institutional determinism and agency as creative learners and innovators are in need of explanation, and for this it is important to explore actors’ “propensity to come into collision with established practices and to seek to change them” in their embedded institutional context (Mutch, 2007, p. 1123).

Considering the question posed by Mutch (2007), in which he asks “how is it that, in a shared institutional environment, some appear to be the instigators of change?” (p. 1123), this research adopts insights from the review of Leca et al. (2008) on ‘institutional entrepreneurship’ for exploring the possibilities in which there is the overcoming of embedded biases and assumptions and the introduction of innovative practices.

In a comprehensive review of the literature on ‘institutional entrepreneurship’, Leca et al. (2008) examine 67 research studies on the topic published since 1988 in the fields of management, organization studies and sociology. From their review, two broad questions were identified, which are useful for exploring the process of production and reproduction of innovative ‘ways of thinking and acting’ in this research. The two questions are:

1. Under what conditions is an actor likely to become an institutional entrepreneur?
2. How does the process of institutional entrepreneurship unfold?

Considering the enabling conditions for institutional entrepreneurship, Leca et al. (2008) identify three categories: (i) field-level conditions, (ii) actors’ social position in the field, and (iii) actors’ specific characteristics. The field-level conditions include aspects that are related to the concept of ‘external forces’ used in this research, such as precipitating jolts and crises, in the forms of social upheaval, economic and political crises, technological disruption, scarcity of resources, competitive discontinuities or regulatory changes, which disrupt the socially constructed field-level consensus and contribute to the introduction of

new ideas. Another field-level condition is the presence of multiple and contradictory institutional orders, which Leca et al. (2008) call degrees of institutionalization and heterogeneity. On one hand, a high level of institutional incompatibilities and contradictions can produce an unstable tension in a given system that “enables a shift in collective consciousness that can transform actors from passive participants in the reproduction of existing institutional arrangements into institutional entrepreneurs” (p. 8). Moreover, studies also suggest that low institutionalized fields, characterized by unstructured, unorganized or uncertain institutional order, provide opportunity for institutional entrepreneurship. On the other hand, it is also argued that lower heterogeneity and high institutionalization across the field reduces uncertainty and the need to preserve stable predictable rules and norms, allowing actors to engage in innovative strategic action (Leca et al., 2008).

According to Leca et al. (2008), the studies reviewed also suggest that social position influences actors’ perception of the field and their access to the resources needed for institutional entrepreneurship. Based on their review, there is contradictory information regarding actors’ position because some argue that the ones in the periphery or margin of the field are more likely to act as entrepreneurs, while others mention that actors at the centre of fields can also exert this role. The agreement, on the other hand, is on the relevance of their social position in a network, in terms of the set of stakeholders to whom entrepreneurs are linked, because this can facilitate resource mobilization and the accepting of innovative ideas based on perception of legitimacy in the eyes of other actors (Leca et al., 2008)

Considering the third aspect, the role of actors’ specific characteristics, Leca et al. (2008) review studies that focus on enabling conditions at the individual-level. In this sense, institutional entrepreneurship relies on socially skilled actors in terms of empathy and value congruence. Socially skilled actors with empathy are able to introduce new ideas because they can relate to the situation of others and persuade them to cooperate with new ideas and practices. Others can create a connection between the values of their causes and people’s personal identities stimulating shared understandings as a force for change (Leca et al., 2008).

The second question covered by Leca et al. (2008) is about how the process of institutional entrepreneurship unfolds. They explain that entrepreneurs must mobilize actors as allies such as professionals and experts and develop alliances and cooperation. They divide their review in three processes: (i) using discursive strategies, (ii) mobilizing

resources, and (iii) designing institutional arrangements. The use of discursive strategies involves framing the institutional project in such a way that it will resonate with the interests of potential supporters and gain legitimacy over existing institutional arrangements, which are in turn framed for their drawbacks.

The process of mobilizing resources implies that the success of institutional entrepreneurship depends on actors' capacity to access and leverage critical tangible and intangible resources (Leca et al., 2008). Tangible resources include financial assets to overcome sanctions and unpopular action, as well as to gain support in favour of a project and to build coalitions with other players. These can be complemented with the hard elements related to the concept of 'capacity' discussed earlier in this chapter, such as formal and instrumental plans and technical know-how.

Intangible resources include cultural and symbolic dimensions such as social capital, legitimacy and authority. Social capital means ability to draw political support and influence others' actions; legitimacy means "the extent to which an entrepreneur's actions and values are viewed as consistently congruent with the values and expectations of the larger environment" (p. 16); and formal authority means actor's legitimately recognized right to make decisions, such as official positions (Leca et al., 2008). These resources can be complemented by soft capacity elements including support, motivation, commitment, networking and leadership.

The final process covered by Leca et al. (2008) is the designing of institutional arrangements. They mention that entrepreneurs use discursive strategies and mobilize resources in order to design regulative and normative institutional arrangements. The regulative types include legal provisions that render new practices mandatory; while the normative type refers to the introduction of aspects such as professional codes and identity, rituals and establishment of standards (Leca et al., 2008). The concept of institutional entrepreneurship reviewed by Leca et al. (2008) proposes useful analytical insights for exploring actor-relations in the formulation of a PPP project, considering the production and reproduction of innovative 'ways of thinking and acting' in overcoming embedded assumptions and biases.

## **5.5 Approach to the second research question (lessons learned to inform recommendations)**

In order to answer the second research question (“What are the lessons learned for the formulation of infrastructure PPP projects in Brazil in the PRI pre-tendering stage?”), an aspect deserves clarification. Although the social construction of the ‘systemic institutional arrangement’ for pre-tendering PPP formulation is contextual to the system of actor-relations, this does not mean that its institutional properties cannot affect other systems. The contextual institutional arrangement may affect other systems through the stretching out across time and space of the institutions that represent it.

Although socially constructed in one system, when these institutions cut across contexts, they become external forces of another system and may be incorporated into that system’s time and space as embedded assumptions and biases. Since the theoretical approach of the research considers that actors may draw existing ‘ways of thinking and acting’ from past experiences, events and relations, the lessons learned from the case study can also turn into existing practices, opinions, perceptions and expectations reflecting abstract properties of a system that may cut across time and space (Giddens, 1984). Granovetter (1992) argues that institutions reflect the properties of social networks and asserts that, even when networks no longer exist, the institutions take a life of their own and become locked in, turning into congealed social networks (p. 7). Consequently, this research considers that institutions produced or reproduced in a specific social system can influence other systems and also be enacted as institutional myths, standard responses or rules of appropriateness in different contexts.

## **5.6 Summary of Conceptual Framework**

Based on the discussions in this chapter, the elements of the conceptual framework used in this research are summarized next:

- The systemic formulation of PPP project in the pre-tendering stage under the PRI mechanism involves:
  - The construction and enactment of the ‘systemic institutional arrangement’;
  - The production and reproduction of existing and new ‘ways of thinking and acting’.

- Actors' interactions situated in time and space take place through systemic processes for the formulation of a PPP project;
- Empirically observable institutions, which reflect the socially constructed properties of the system during the process of PPP formulation; and
- Institutions that may stretch out across time and space and affect other systems.
- The systemic formulation of PPP project in the PRI pre-tendering stage also involves simultaneous systemic processes:
  1. The production and reproduction of 'systemic institutional arrangement', composed of:
    - Policy arrangement
    - Legal arrangement
    - Organizational arrangement
    - Strategic arrangement
  2. The production and reproduction of embedded 'ways of thinking and acting' (reinforcement of assumptions and biases through institutional myths and rules of appropriateness):
 

*Formal or informal institutional myths can be incorporated into actor-relations through existing beliefs and cultures leading to the replication of existing practices. Institutional myths are usually replicated but with specific contextual characteristic based on perceptions of coercion and/or legitimacy. Actors may also follow formal or informal rules of appropriateness, by enacting existing practices that they consider most appropriate for the contextual circumstances.*
  3. The production and reproduction of innovative 'ways of thinking and acting' (the overcoming of embedded assumptions and biases).
 

*The development of new systemic 'ways of thinking and acting' and the overcoming of embedded assumptions and biases through interventions of institutional entrepreneurship.*
- Analytical concepts for exploring the interplay between systemic processes:
  - The influence of external forces, which will be accounted through the embeddedness of policy, legal, organizational, strategic and political cultural elements in the social systemic context in which actors engage for the PPP formulation;
  - Contextual dynamics of formal and informal actor-relations;
  - Ways of thinking and acting': (i) practices, opinions, perceptions and expectations; and (ii) attitudes, strategies, skills and resources.

This chapter presented the analytical tools for exploring actor-relations in the pre-tendering formulation of PPP projects in Brazil. These are mainly based on the old

institutional theory, but complemented with insights from new institutionalism (embedded 'ways of thinking and acting') and by the contingent role of external forces as an attempt to deal with the limitations of old institutional theory. The next chapter will explain the strategy and methods used to implement the research. It will explain the qualitative approach to inquiry, the case study selected for the research, and the data collection methods primarily based on 34 in-depth interviews with public, private and technical actors. It will also detail the process of data analysis and explain how issues of validity and reliability were addressed in this research. The three subsequent chapters (7, 8 and 9) will present the research findings based on the analytical concepts discussed in the conceptual framework.

## Chapter 6 - Research Strategy and Methods

### 6.1 Introduction

This chapter presents the qualitative strategy adopted for the research, and the underlying philosophical assumptions guiding the approach to inquiry, data collection and analysis. It explains the selection of a holistic single case-study to analyze actor-relations in the pre-tendering formulation of a PPP project based on the Procedure for Request of Interest (PRI). This chapter also describes the process and methods used for data collection, which include documents, meeting observation and interviews; and the process of data analysis. Finally, it discusses how validity and reliability were approached in the research process.

The qualitative research strategy adopted is an innovative approach to policy analysis in the Brazilian context. In a recent and groundbreaking compilation about policy analysis in Brazil, Andrews (2013) argue that the approaches to policy analysis are mostly based on econometric models and other quantitative methods. This has been the dominant paradigm since the first years of the military dictatorship in Brazil, when the Institute for Applied Economic Research (*Instituto de Pesquisas Economicas Aplicadas, IPEA*) was found in 1964. IPEA has continuously produced several Discussion Papers on the analysis of policies, focusing mainly on cost-effectiveness and cost-benefit approaches. According to Andrews (2013), only 5% of the Papers published between 2010 and 2011 involved the use of qualitative methods. In Brazil, the qualitative approach is still incipient and lacks methodologies and even applied empirical studies based on systematic direction (Vaitsman et al., 2013). Therefore, this research has a methodological contribution to make because it highlights the role of actor-relations and process based on qualitative methods. This research takes an interpretive approach to policy analysis and is not so much concerned with whether the PRI process achieved intended results and outcomes, but more with how actors completed the process through their relations and how the process achieved intended results or not.

### 6.2 Philosophical Background

The main motivation for this research is to understand why many cases of PPP project formulation in Brazil are not finishing the PRI pre-tendering stage. More specifically,

this research aims to study actor-relations in the pre-tendering formulation of a PPP project based on the Procedure for Request of Interest (PRI) mechanism.

The philosophical assumption adopted for this research is that the process of PPP formulation is socially constructed by actors-relations, as it influences the production and reproduction of the institutional arrangement that guides actor-relations in the process (Hodgson, 2000). As actors engage in social relations, they shape processes and are also influenced by them in their choice of behaviour and strategies (W. Scott, 2004). As Granovetter (1992) argues, actors are embedded in social relations that constrain and shape their behaviour; but as actors interact, they also learn from their social relations and are capable of constituting and changing the arrangements that guide their behaviour (Healey, 1999). This research, therefore, focuses on the social construction of an institutional arrangement by actors' interactions and on the influence of these social relations on actors' preferences and decisions.

In the Brazilian context of PPP project formulation, to understand a world that is socially constructed by actors through their interactions, this research will consider the way actors understand and perceive each other and their relations, which reflects on their assumptions and biases and affects their behaviour and choice of who to interact with. Based on these ideas, several aspects provide the basis for the approach to this research design. First, institutional arrangements are dependent on the activities they shape, in which actors' experiences in social relations affect their understanding about the arrangement that influences their behaviour (Furlong & Marsh, 2010). Second, institutional arrangements are not independent from agents' views of their behaviour in social interactions; and third, these arrangements change as a result of the action of agents in social interactions (Furlong & Marsh, 2010).

Consequently, the socially constructed world of actors must be understood from their perspectives to account for the variations across time and space, and for the changes taking place as actors live their experiences and interact with other actors. This process of understanding the complex world of lived experience must be done from the actors' point of view because the world of lived reality and practice and situation-specific meanings that create the object of investigation is thought to be constructed by social actors themselves (Gregor, 2005)

This research, therefore, considers that actors are conscious and capable of self-considering their actions in their relations with others in the social context under study,



especially taking into account that actors still possess the autonomy to choose their strategies of action within constraints, representing an institutional arrangement that is contingent, inconsistent and changeable (Kemp, 2010). Actors not simply act in face of such constraints, but they are able to critically think about the consequences of their actions and relations with others (Kemp, 2010). In view of these observations, the results of this research will reflect an interpretation of the social relations constructed by actors from their perspectives, in face of constraining but also changing social interactions and institutional arrangements, by focusing on the meaning actors' attach to their behaviour, considering that actors' reasoning and intentions in those interactions are the ground for social action (Furlong & Marsh, 2010).

Since this research is interested in studying the social construction of a constantly changing reality based on interpretations and meanings, the use of quantitative methods could produce misleading data due to the fact that they are aimed at producing explanations of objective realities given certain conditions. The proposed research, therefore, will not pre-consider actors as having given tastes and will not focus on the application of a mathematical model, based on statistical and quantity data, to make logical deductions from individuals' supposedly predictable behaviour (Dugger, 1979). The conceptual framework developed for the research will be used to analyze the data collected through different qualitative sources (interviews, document and meetings) (Dugger, 1979). In order to demonstrate that the conceptual framework corresponds to the socially constructed reality of actors, it will be carried out an analysis based on their interpretations and understandings, and not based on statistical data for making predictions (Dugger, 1979).

Quantitative research may help in explaining the mechanisms, outcomes and linkages of a process, but qualitative research is needed to understand the 'how', the construction of people's choices which lead to processes, as well as to understand the deeper thoughts and behaviours that govern their responses (Creswell, 2007). The use of qualitative methods for data collection helps in establishing and interpreting the way people understand the reality in which they are embedded, not through direct and objective observation, but through social construction. Additionally, a qualitative approach to the research will assist in unpacking and understanding the problem at hand, rather than relying on predetermined (existing and observable) information that does not reflect the socially constructed reality that constitutes the object of study. For this, it relies on individuals' expressions and their voices, within their contexts and settings, allowing for the

clarification of any misinterpretations and incorrect assumptions by the researcher (Creswell, 2007).

### 6.3 Brief review of research topic & case study location

This research is a study of actor-relations in the pre-tendering formulation of an infrastructure PPP in order to understand why many cases of PPP project formulation in Brazil are not finishing the pre-tendering stage based on PRI mechanism. The municipality of Fortaleza has been selected as a case study for the study of the complexity of actor-relations in the negotiations that take place in the pre-tendering stage. Fortaleza is located in the state of Ceara, in the Northeast of Brazil and has approximately 2.5 million inhabitants (The Brazilian Institute of Geography and Statistics, 2010). It is the 5th largest municipality in population, and has an urbanization level of 100% (The Brazilian Institute of Geography and Statistics, 2010; The Ceara State Institute for Economic Research and Strategy, n.d.). The next figure shows the location of Fortaleza in the map of Brazil.

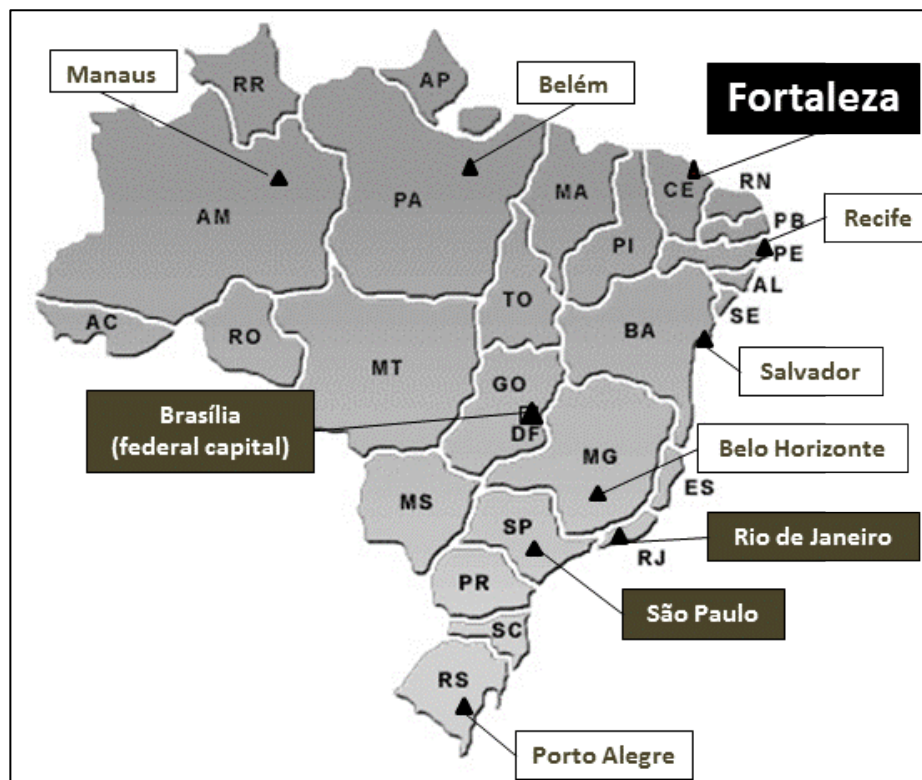


Figure 3 - Location of the municipality of Fortaleza in the map of Brazil.

Adapted from The Brazilian Institute of Geography and Statistics (IBGE) (2000). *Divisão política-administrativa do Brasil [Political-administrative division of Brazil]*. Gismaps. Retrieved from <http://gismaps.com.br/divpol/divpol.htm>. Adapted with permission.

Considering the topic of this research, the case of Fortaleza is important because actors engaged in the formulation of an urban mobility infrastructure PPP project in a scenario that was more complicated than the other PRI cases, especially because it lacked the elements of the Brazil PPP Framework prior to actors' engagement in the PRI process. It is also important because actors completed the pre-tendering stage which is the first step towards the use of the PPP instrument for infrastructure development in Brazil. Therefore, through an investigation of the dynamics of actor-relations, this case will provide information on elements that influence the formulation of infrastructure PPP projects and lessons for PRI pre-tendering processes in Brazil

Although it is possible to estimate the level of complexity involved in formulating a PPP project, little is known about the variety of intertwining processes that link actors together in the pre-tendering process. Consequently, the object of analysis for this research is not suited for a quantitative and statistical approach, which would be aimed at revealing observable "facts", but not at understanding the social-construction of such "facts" based on actors' interpretations of behaviour, beliefs and practices resulting from their relations. This last aspect, however, is possible under a qualitative case study line of inquiry.

#### **6.4 Approach to inquiry: case study**

The approach adopted in this research was the *holistic single case-study*. It was based on the interactions between public, private and technical/consultancy actors in the PRI pre-tendering stage for the formulation of an urban mobility infrastructure PPP project. The PPP was part of the city centre re-ordering policy in the municipality of Fortaleza, Brazil. The study undertaken was holistic because it considered all possible identifiable and relevant relations among these three groups of actors within the context, for an in-depth exploratory and descriptive analysis of the case, which was intrinsic in nature considering that the main interest was to better understand its particularities (Stake, 1995; Yin, 2003). Some critics argue that the holistic approach can lead to an abstract analysis, but since the scope of this case was focused and clearly specified, the holistic approach assisted in understanding the complexity of actor-relations in the process (Yin, 2003).

A case study was the best approach to address the exploratory questions for this research. Yin (2003) mention five approaches to inquiry: experiment, survey, archival analysis, history, and case studies. Based on an analysis of research questions, he says that of these five approaches, case studies, histories and experiments are useful for answering

“how” and “why” research questions. In order to identify the appropriate approach, Yin (2003) mention that it is necessary to determine the need to exert control over and to access actual behavioural events. *Histories* are used when there is no access or control, such as in the case of past events; but when it considers contemporary events and there is the possibility of access and control, it overlaps with case studies. *Experiments*, on the other hand, are used when the investigator wants to manipulate behaviour “directly, precisely and systematically” (Yin, 2003, p. 8). Yin (2003) adds that if the aim of the research is to know “how” or “why” a process works (or not), case studies or field experiments are the most appropriate approaches.

Since experiments require manipulation of behavioural events, which is not the aim of this research, it is possible to conclude that case study is best suited for the analysis, which, according to Yin (2003), is preferred for the study of contemporary events, when the focus is not to manipulate behaviour and for a set of events which the researcher has little or no control over. Yin (2003) also justifies the use of case studies when contemporary contextual conditions are believed to be highly pertinent to the phenomenon under study and when phenomenon and context are not easily distinguishable, which is the situation in this research.

The municipality of Fortaleza was initially selected as the *single case-study* for its *representativeness* and *uniqueness*, and for its *revelatory nature*. A *single case-study* approach was initially chosen because the selected case was *representative* (Yin, 2003). The pre-tendering process of PPP formulation based on the Procedure for Request of Interest at the federal, state and municipal levels include similar types of private, public and technical actors. Public sector actors usually include secretaries, politicians, officials and civil servants; private actors are investors who usually form a consortium involving service providers and builders; and technical actors are consultancy, advisors and specialists in the variety of areas required for PPP project elaboration, including specialists in the field of infrastructure, which may vary depending on the type of policy intervention. Laws, decrees, PRI publications and legal and administrative procedures are also similar at the federal, state and municipal levels. As mentioned in Chapter 2, Brazilian municipalities use PRI publications of state governments as model for their own PRIs. This is a tendency that started with the elaboration of PPP Laws. The Federal PPP Law was published in 2004, followed by the publication of PPP laws in several states, which were almost identical to the Federal Law. Subsequently to the federal publication, various municipalities, including the municipality of Fortaleza, also used the federal or state laws as models for their own

PPP municipal legislations. A similar tendency occurs in Brazil with respect to the PRIs. Municipalities use the example of PRIs published by states or by other municipalities as model to their PRI publications. Some states and municipalities have also published PRI decrees, using the federal PPP Decree as model, in which PRI regulatory procedures and norms are detailed. Moreover, informal and formal actor-relations in the PRI process happens at all three levels, as well as the complexities and interdependencies. The embeddedness of project finance principles in the pre-tendering process is also present in municipal PPP legislations, which are very close to federal and state laws. Therefore, it is important to consider the representativeness of the municipality of Fortaleza in the Brazilian context.

The *representativeness* of the case was also considered in terms of the scope of the PPP project, which was an urban mobility infrastructure project as part of a re-ordering policy for the city centre of Fortaleza. As indicated in Table 3 of Chapter 2, the urban mobility sector is one of the main areas of PPP formulation in Brazil which are having problems with the pre-tendering stage. Considering the re-ordering scope of the project, it indicates the *uniqueness* of the case in the context of Brazilian municipalities (Flyvbjerg, 2001; Yin, 2003). The PPP project used for the case study is the first PPP at the municipal level in the North and Northeast of Brazil to complete pre-tendering stage for an urban re-ordering or regeneration intervention. Besides Fortaleza, only Rio de Janeiro (Southeast) and Porto Alegre (South) are municipalities that have also decided to adopt PPP projects for regeneration or reordering of an urban area. The re-ordering urban mobility scope of the infrastructure PPP project in the case study included a traffic and transportation element and a social infrastructure element for the ordering of both street commerce and parking in the central area of Fortaleza. Several other municipalities in the North and Northeast of Brazil face similar urban mobility problems in central areas involving parking issues, traffic congestion and illegal occupation of public spaces by street commerce. There are also indications that they have been considering alternative policy instruments, such as the PPP, to traditional procurement methods, but have not taken concrete steps forward. At this point, it is relevant to provide a brief introduction of the case study context, which is presented next.

As of 2006, in the municipality of Fortaleza urban mobility problems were already major topics. Mobility in the city centre was disruptive for most users of the area, as pedestrians complained about the irregular occupation of sidewalks by street vendors and drivers faced problems when trying to park vehicles (Diario do Nordeste Newspaper, 2006;

Wanbergna, 2006). Despite these problems, there was an increasing number of vehicles and consumers going to the city centre on a daily basis. In this context, the scope of the PPP in Fortaleza involved an urban mobility initiative to re-order the city centre, especially considering parking and street commerce.

The parking aspect was aimed at resolving an urban mobility issue caused by severe traffic congestion in the area and shortage of approximately 7,000 parking spaces, and also to deal with the situation of over 250 irregular parking lots in city centre. The aspect of Popular Commercial Centres was aimed at the construction of facilities in the city centre for the relocation of informal street vendors - estimated at 4,000 people –who irregularly occupied public and private areas in the city centre without permission. The conditions of this occupation were inappropriate for the commercial activities and transit of citizens and consumers. Several problems resulted from the disorganised occupation of sidewalks, streets and squares by street vendors, such as congestion of vehicles, lack of safety for pedestrians and street vendors, excessive waste in the streets and squares, etc. However, a solution was not aimed at prohibiting but at organizing the activities of street vendors in the city centre. Not only local business owners and associations, but also city centre consumers, local residents and municipal authorities openly recognized that the activity of street vendors was a matter of family survival and that they represented an important cultural aspect of the city centre of Fortaleza.

The scope of the PPP in the municipality of Fortaleza involved the construction and operation of parking lots and Popular Commercial Centres (PCCs) in the city centre of Fortaleza. It was an urban mobility infrastructure project to solve issues that many other municipalities in Brazil are currently facing. However, Fortaleza is the only municipality in the North and Northeast to have adopted the PPP instrument for regeneration or re-ordering of urban areas. The other two which have used PPPs for similar purposes, Rio de Janeiro and Porto Alegre, are located in the Southeast and South, respectively.

Considering the other municipalities, Rio de Janeiro decided on the PPP instrument for the revitalisation of the harbour area, for restructuring the road and transport system, rearranging the use and occupation of land, as well as promoting the recovery of historical heritage (Odebrecht, 2011). Porto Alegre signed a contract in 2007 for the construction of Popular Commercial Centres in order to solve urban mobility problems in the city centre related to the illegal occupation of public areas by street vendors; but it did not involve from the start the parking lot element which was added a year later to the project because of requests from vendors and consumers. Since the PPP contract signature has already

taken place in Rio de Janeiro and Porto Alegre, this aspect excludes these cases from the scope of the research, considering that the negotiation process prior to contract signature has already happened. This limited the scope of this research, because on-going interactions in the pre-tendering process could no longer be explored.

Another aspect that demonstrates the relevance of the municipality of Fortaleza as a single case is its *critical nature* (Flyvbjerg, 2001; Yin, 2003). Unravelling the dynamics of on-going actor-relations in a case that completed the PRI pre-tendering stage made the case study even more significant. However, prior to field research, it was not yet known that the process would reach completion of the PRI pre-tendering stage. The dynamics of actor-relations were explored in the research as interactions took place in the pre-tendering process to take advantage of the 'fresh memory' of interviewees in the on-going case and at the possibility to 'close in' on real-life situations and explore the social construction of the process as it unfolded in practice (Flyvbjerg, 2001, p. 82). The study was initially aimed at a better understanding of these on-going dynamics, as well as to learn lessons on how the process achieved completion or not of the stage. Since the workings of actor-relations in the pre-tendering stage of PPP formulation in Brazil is still a 'black box', the descriptive analysis alone was meant to make the case a *revelatory one* (Yin, 2003). Besides that, supposing the case did not complete the pre-tendering stage, the knowledge on the problems that derailed the process would have been highlighted. On the other hand, since the case study completed the PRI pre-tendering process, it also became a *critical case*, considering that many processes of PPP formulation in Brazil have failed or are still struggling to complete the PRI pre-tendering stage. Moreover, actors were able to complete the PRI process in a scenario that was more complex than the other PRI cases because it initially lacked the elements of the Brazil PPP Framework.

This is in line with Flyvbjerg (2001) argument that single critical case studies are important for 'falsification'. For him, this is one of the most rigorous tests on scientific propositions because if one observation does not fit the proposition, it cannot be considered generally valid and must be revised or rejected. He uses the example of 'all swans are white', but the observation of a single black swan can falsify the proposition. Therefore, since the case study completed the PRI pre-tendering process without the guidance of the elements of the Brazil PPP Framework, it is a critical case that draws attention not only to the dynamics of actor-relations in the process, but also to possible problems with the PPP Framework that has been generally adopted in Brazil. Considering that officials and experts in Brazil have continuously supported the Brazil PPP Framework

as the mainstream approach for guiding the formulation of PPP projects, according to this perspective since the case study for this research lacked the elements of the Brazil PPP Framework, it was 'most likely' to fail the completion of the pre-tendering stage (Flyvbjerg, 2001). However, since the case study succeeded in this scenario, important lessons were derived with respect to other major elements that may influence actors' interactions in the process.

In this context, the case study selected is a *critical case* to understand the elements that influence the dynamics of actor-relations towards completion of the pre-tendering stage of infrastructure PPP project formulation. The selected case is relevant because it is a leading case in the context of Brazilian PRI cases, and the identification of the problems and conflicting views and interests preventing and fostering cooperation in this case provide a useful initial guide for other cases that may decide in the future to formulate and implement PPPs for infrastructure development. This analysis identified types of relations that deserve more attention to foster and improve the important dialogue and interactions between actors for the shared decision-making process of PPP formulation. The relevance of the selected case is also a result of the empirical analysis, leading to a reflection on the applicability of research design and on the lessons for policy and practice. This also makes the municipality of Fortaleza a *revelatory case* because in Brazil this is not a common type of policy analysis inquiry, which investigates the dynamics of actor-relations in the pre-tendering stage of PPP formulation.

## **6.5 Approach to data collection**

Before discussing the procedures for data collection, it is important to mention that, as Creswell (2007) points out, the research design for a qualitative approach can be emergent and cannot be tightly prescribed, since the phases of the process may change once the researcher begins to put it into practice, including set of questions, forms of data collection, and the individuals studied. Mason (2002) supports this assertion and says that design and strategy in qualitative research may change with the on-going process of the research itself.

## **6.6 Data collection**

In view of the philosophical approach adopted for this research, it is appropriate to mention that since this research was mainly interested in people's interpretations, perceptions, meanings, reasoning and understandings, these aspects represent the primary



data source for this research (J. Mason, 2002 ). Consequently, interviews were the main source of evidence for the case study, which were best reported and interpreted through the “eyes of specific interviewees” (Yin, 2003, p. 92). Moreover, documents and meeting notes and observations were used as secondary sources, and interpreted based on people’s individuals or collective meanings (J. Mason, 2002 ).

#### **6.6.1 Documents**

As secondary source of data, documents were used as one method of collection of evidence in this research. This source of information was important in supporting and expanding evidence from interviews. The documents were used to identify the explicit formal relations between the actors, their explicit agendas, their explicit perceptions and opinions about other actors, as well as their explicit interests in negotiating (or not) the issue with other actors. Indicative information of implicit relations, perceptions or interests were clarified, confirmed or rejected during the interviews, along with discussions for confirmation on explicit information identified in the analysis of documents. The interviews also helped to confirm impressions transmitted by third parties or information (opinions) exposed in the press. It is also important to consider that the analysis of documents, especially in the collection of indicative information of actors’ perceptions, opinions and interests, were not treated as a direct representation and reflection of ‘reality’ or straightforward ‘factual records’ (J. Mason, 2002 ). Based on the theoretical assumption of this research, documents were interpreted in the social, cultural or political context in which they were created, rather than as sources of facts about particular events and individuals.

In view of the actors involved in the negotiations, and the formal links and procedures required by the PRI pre-tendering formulation process of a PPP project, data was collected from legal documents, such as laws, decrees, resolutions, etc., which formally establish the procedures that actors are supposed to follow in their interactions from the beginning of the negotiation process. Other documents such as independent studies and newspaper articles were used to complement this analysis, especially with respect to the initial stages of the process which had to be covered retrospectively since they took place before the fieldwork. The range of documents also assisted in determining crucial events or information, which were mentioned to the interviewees to encourage a discussion about their perceptions, interests and opinions.

Besides that, documents elaborated and that became available during the research period were of great importance especially prior to interviews, such as technical studies and legal documents. An analysis of these documents helped to provide the appropriate 'prompts' to elicit interviewees in recording relations and other information they did not easily recall, especially considering those with a vast network of interactions (Carrasco, Hogan, Wellman & Miller, 2008). There were no problems with respect to accessibility of documents, neither in finding the materials nor in obtaining permission to access and use them. Several of the documents were already available online. For the ones that were not accessible, the interviews were used to request these documents and to obtain indications of other documents. The documents used in this research are listed in Appendix 1.

### **6.6.2 Meetings**

Observation of meetings was not a method initially intended prior to the fieldwork. However, during the research process, participation in meetings as observer became an option of data collection. Notes taken and recordings of some of the meetings were used as secondary data to understand the on-going behaviour of actors and the process and to see the unfolding of events as they took place. Stakeholders involved in these meetings were informed of the researchers' participation and gave consent for either not-taking or recording of the discussions undertaken. The meetings were arranged as the process happened, so it was not possible to prepare a schedule for observing meetings a priori. This method was also important to validate and triangulate information, and to use as source for discussion during the interviews and also to confirm and check documents and aspects discussed in other meetings. In total 11 meetings were observed during the fieldwork. The types of actors involved in each of the meetings are detailed in Appendix 2. The meetings used as observations included daily work routine in which it was possible to observe the internal technical dynamics of the PPP formulation process, as well as special meetings between consultancy directors and technical actors; meetings between private investors and consultancy and technical actors; and meetings between private and public actors. Information on other meetings in which the researcher was not able to participate were obtained through written meeting minutes, reporting the main issues considered by the actors involved.

### **6.6.3 The collection of interview data**

According to Yin (2003), interviews are one of the most important sources of information for case studies, especially the guided conversations rather than structured

questions. The interviews for this research were based on focused open-ended topic or questions, which are most advisable for case studies (Yin, 2003). They were based on a conversational and fluid approach but still following a consistent set of questions that met the research's line of inquiry. The use of 'one-size-fits-all' structured approach similar to formal surveys and based on the standardization of questions to minimize 'bias' (as in social interaction between interviewer and participant) would not have created the opportunity for the interpretation of constructed knowledge specific to each interview (J. Mason, 2002 ). Additionally, since this research was based on a holistic case study aimed at in-depth understanding of the topic's complexity, surveys or structured types of interviews, which provide surface patterns, would not have been able to give the adequate information about the social construction of explanations and arguments (J. Mason, 2002 ). Consequently, in order to understand the research topic from the philosophical approach adopted, it was necessary to understand people's contextual experiences, and not to focus on a superficial and broad analysis of responses to standard questions provided by a large number of people (J. Mason, 2002 ).

#### **a. Preparing for interviews**

Before the interviews, a protocol (or schedule) was prepared with guiding open-ended topics to help in the organization of the ideas and on items such as opening and concluding the interview, and thanking the respondent (Creswell, 2007). Since interviews were open-ended and resembled conversations, only a general interview schedule is available in Appendix 3 with a sample of guiding topics/questions. Moreover, it was important to account for the order in which to approach actors to be interviewed for this research. Contact was initially established with participants who were considered most likely to open the door for other important interviews and sources of evidence. This was a successful approach since there were no incidents of 'hostile' participants; and no interviewee tried to create interferences (blockages) for access to other people. However, there were some obstacles in the process which are mentioned later in this section.

As Creswell (2007) mentions, one of the biggest challenges to interviews is convincing people to participate in the study, building trust and credibility, and getting people to respond. In this context, the credibility of the researcher was essential in opening doors to key stakeholders. It was important to present the researcher's academic and professional background, as well as to demonstrate a level of understanding on the subject, but not to a point so as to inhibit the participant from opening up to the conversation.

Gender issues were considered, since the researcher is a woman and most interviewees were men in high senior positions, except for some of the Secretaries and technical actors.

Prior to each interview, consent forms and information sheets (considering issues like disclosure of information, direct attribution, confidentiality, etc.) were forwarded via email to interviewees when possible, in compliance with the requirement of the University of Sheffield. These are presented in Appendix 4 and Appendix 5. When email addresses were not available, interviewees received the consent form and information sheet prior to the start of the interview, and participants were given time to read and reflect on the forms. It was explained to participants the contents, emphasising the importance of their contribution, but also explaining the confidentiality of the process (Creswell, 2007). The importance of respondents' participation in generating fairer and fuller representation of their perspectives was emphasized (J. Mason, 2002 ). Permission for recording was asked prior to the interview, but reassurance whether the information shared 'on the record' could be used in the research was also obtained after the meeting.

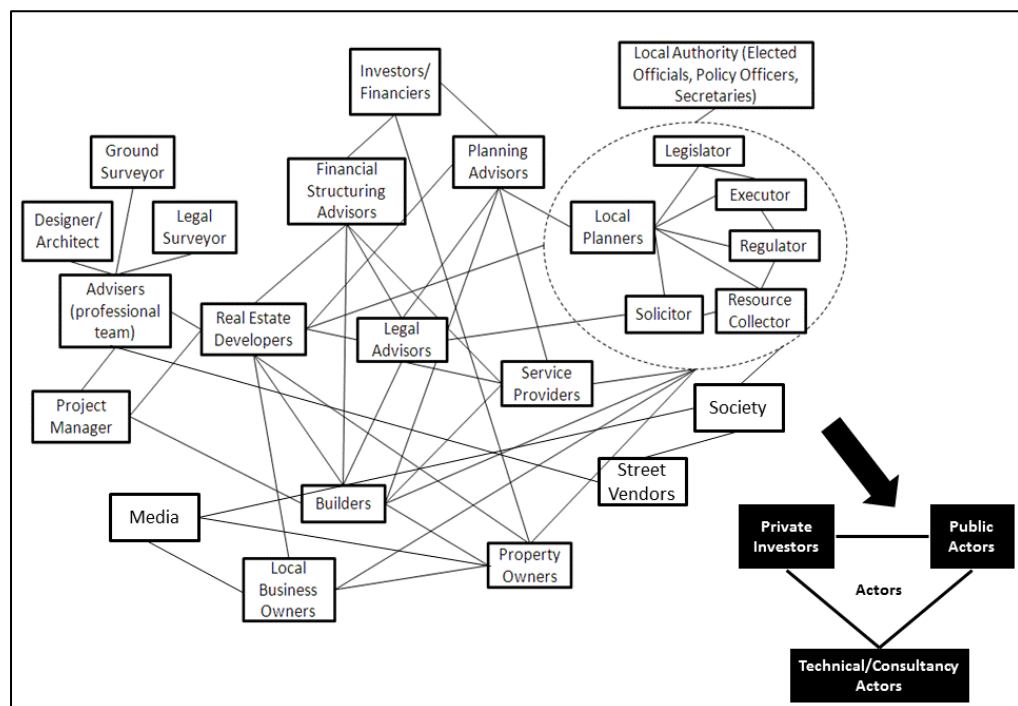
#### **b. Interviews collected**

Interviews were chosen because it was a way of asking key participants to contribute with their insights on the subject, and to suggest additional topics for further inquiry, other persons to be interviewed and other sources of evidence, as well as to provide access to documentary sources. However, this research did not rely solely on specific interview informants, and other interviews were also used as sources to confirm information and to search for contrary evidence in an effort at triangulating the data.

A list of initial interviewees was based on a purposive sample. Since the sampling strategy is not aimed at selecting a strategically representative sample, *a purposive sampling approach* was used to identify respondents that were representative of the actors who interact with each other for PPP formulation processes considering the context and issue that was being studied. If a random sample of interviewees in this scenario had been selected, it would have detracted from the initial goal of holistically studying the case. The criteria for mapping actors and selecting interviewees was based on their positions as individuals or as representatives of organizations involved in the negotiation and decision-making process, considering also their level of accessibility and specific or general knowledge about the issue.

The initial approach was intended to include all possibly identifiable actors and relations in the context of the case study. However, during the research process, this

approach was considered impracticable because it would result in too large a scope for this research and create difficulties for the in-depth exploration of actor-relations in the pre-tendering process. *Figure 4* ahead portrays the initial picture of actor-relations in the case study prior to fieldwork, which was reduced to include the interactions between all internally involved public, private and technical/consultancy actors. The following groups were not included in the data collection: media, local business owners, property owners, street vendors, society. Appendix 6 provides more detailed information on the interviewees by job title and type of organization. An important issue in selecting the case study also involved practical issues of accessibility of evidence and availability of research resources, which were relevant aspects for making the process feasible (Curtis, Gesler, Smith & Washburn, 2000, p. 1003). Considering that Fortaleza is my hometown and place of work, it was taken into account the competencies of the case study as important elements for the feasibility of the research process, such as ability to access participants and their experiences for data collection throughout the pre-tendering process of PPP formulation. In total, 34 interviews were collected during the research process with all the actors from these three groups involved in the pre-tendering stage: (1) Consultancy/Technical actors: 14 interviews; (2) Public sector actors: 11 interviews; and (3) Private investors: 9 interviews



*Figure 4* - Groups of interviewees

Considering the location for the interviews, they were conducted on a neutral place, always where interviewees felt comfortable and relaxed to share their views and interpretations. Interviewees were always asked to suggest the place for the interview. It was also taken into consideration that the location was secure and quiet, aiming at the safety of both participants and at an efficient note taking and digital voice recording, which was consented upon by every interviewee.

The interviews were carried in Portuguese, because it was the native language of all interviewees. There was no challenge related to language communication problems, since the researcher's native language is also Portuguese. Therefore, the dynamics of the interviews was not affected by lack of language skills of the researcher in the interviewees' native languages. The fluency of the research in Portuguese also assisted in the translation of key aspects into English in order to express participants' observations in the best way possible. Moreover, even though some of the actors in senior positions were fluent in English, the interviews were undertaken in Portuguese since these interviewees argued that they expressed themselves better in their native language.

### **c. On the information collected**

The interviews were used to identify actors involved in the process, and also to confirm the relevance of other actors. During the interview process, special attention was paid to new names of potential participants mentioned by the interviewees. Interviews were used to confirm explicit formal and informal relations and to unravel implicit relations between the actors, as well as to identify their opinions, interests and perceptions and the extent to which these changed with actors' interactions in the pre-tendering process of PPP formulation. For this, some key participants were interviewed more than once for comparison and in order to capture changes in perspectives during the process. The interviews were aimed at understanding major aspects related to actor-relations in the context of the case study including, for example: actors' views and interpretation of the PPP formulation process and of their interactions with each other; actors' perceptions, expectations and opinions of the process and of other actors; actors' interests in interacting with each other; actors' biases and assumptions towards the process and other actors; and actors' intentions for engaging in the PPP formulation process. More details on the handling of the data collected will be addressed ahead in section 6.7.

#### **d. Obstacles during data collection**

The complexity of the interactions in a pre-tendering stage of PPP formulation required the identification of new interviewees that got involved as the process unfolded. Within the same organization (public sector, consultancy) or among the same group (private investors, technical actors), the actors identified first were the ones involved in the beginning of the negotiations. As the process unfolded, other actors joined the process as project manager, coordinators, technical actors, private investors, which were also contacted for interviews. It was made the attempt to directly contact interviewees via phone calls. In most cases, there were no problems accessing interviewees, especially civil servants and technical actors, and even some actors in senior positions (public officials, Secretaries, senior investors and directors). Some asked for a more in-depth explanation on the research topic and intentions in the same phone call, while others requested more details to be sent via email. However, the mayor of Fortaleza was not available for interviews; direct contact was not possible, so her secretary explained the interview would not be possible due to the mayors' busy schedule with political commitments. As an alternative, other respondents provided relevant perspectives on the similar issues and on meetings in which the mayor participated, which were important for the PPP formulation process in the case study. The role of the mayor was accounted for through the perspective of interviewees, as well as through press statements in media publications. For this research, 'cabinet decision-making' was considered as an external force that influenced the process of PPP formulation (Lowndes, 2001).

In other circumstances, it was difficult to obtain access for interview in the first attempt. Some potential senior participants were contacted more than once and interviews had to be re-scheduled a few times (including due to participants' no-show), which made the process more time-consuming than expected. In a few instances, it was necessary to use personal connections and resort to the role of my sponsor to obtain cooperation from interviewees. It was acknowledged that this approach could have resulted in bias or interviewees' reluctance to share information in comments and answers, especially considering the participation of the sponsor in the case study as consultant and his position in the local context with connections to both public and private potential interviewees involved in the case study. Another aspect worth mentioning was my position as a consultant. I work for the same private consulting firm that provides services to both public and private organizations, which was involved in the interactions for PPP formulation in the case.

Potential interviewees from these organizations might not have been able to differentiate my position as a researcher from consultant. In order to counterbalance possible negative effects on reliability or validity of the data, the effort was made to emphasize my credibility as researcher and ethical commitments to confidentiality. It is hard to know whether interviewees omitted opinions because of this, since none refused to participate, or openly refused to comment on any of the topics. Furthermore, they neither asked to keep information 'off the record', declined to allow the digital recordings or to sign consent forms. On the other hand, the non-sharing of secretive information or comments concerning illegal issues such as bribery and corruption could have been a result of reluctance that information could be leaked, publicly revealed or misinterpreted by the researcher (Creswell, 2007).

Moreover, as an alternative to the intervention of the sponsor, personal acquaintances of mine with a vast social network in the municipality of Fortaleza, but not with a relation to the case study, contacted interviewees in senior positions and facilitated accessibility. Additionally, in the effort to avoid biases, the researcher tried as much as possible to avoid tendencies of aligning interview discussions to intentionally foster sympathetic behaviour from participants. Despite all of this, for example, when documents were obtained from an interviewee, I was asked not to mention to other participants who had provided the documents, but I was allowed to comment on and use these materials in subsequent interviews; the participant only asked to remain anonymous (although the name would not have been mentioned anyways due to confidentiality commitments). There were also instances in which some interviewees commented on specific events but refused to give out names or actors' positions; instead, reference was similar to 'some private/public actor involved in event X ...'. Later, these events were either used as cues or brought up in subsequent interviews, and based on the events and dates, it was possible to identify the omitted participants through interview transcript cross-checking. Civil servants and technical actors were more reluctant to share names than participants in senior positions.

During the interviews, there were some problems when collecting the data, such as legal terminology and project finance concepts, which were clarified by the researcher on the spot. There was also the challenge of differentiating between the personal opinion of an interviewee and the opinion reflecting his or her organizational role, as well as whether the comments about third parties reflected his or her perception of an organization or the individual who represented that organization.



#### **e. Ethical considerations**

To avoid any ambiguities in relation to the use of the data provided by interviewees, great attention was given to clarifying to respondents what they would be giving consent to by signing the form (J. Mason, 2002 ). Signature of consent form was obtained after the interview. In the analysis of the interviews, evidence was only used in the research after assessing no potential harms to interviewees. The issue of informed consent was taken seriously in this research, in order to assure the adoption of a rigorous moral practice, the confidentiality of respondents and the safety of both researcher and participants (J. Mason, 2002 ). However, as mentioned, there was no sensitive information disclosed by interviewees, such as bribery or corruption.

Another ethical issue considered in the interview was power relations, especially because several interviews were undertaken with people in senior positions. However, interviewees in these positions did not try to control the agenda through intimidation, for example; so it can be said that power relations were equilibrated in the interviewing process. Even considering the novelty of the PPP topic in Brazil and in the context of Fortaleza as a case study, during the interview the dynamics of positionality and power were balanced and interviewees were comfortable to share their perspectives and opinions. This reflected a rich exchange of information between the interviewee – with more practical knowledge and experience - and the researcher – with more disciplinary and academic knowledge on the subject (J. Mason, 2002 ; Smith, 2006).

#### **6.6.4 Timeframe of data collection**

The next table presents the timeframe for the fieldwork, making a parallel between data collection and the pre-tendering stage of PPP formulation in the case study.

Table 6 - *Timeframe of data collection*

CASE STUDY	PRE-TENDERING STAGE (PHASE 1 – PPP project formulation)		
	Agenda Setting (unofficial stage of interactions)	Official stage of interactions, but no legally binding contract (approx. 1 year of process until completion of project design and Public Consultation in June 2012)	
	2005 – June 2011	2011	2012
		July – December	January – June
FIELD RESEARCH	Late October 2011 Beginning of field research		Early July 2012 End of field research
	<ul style="list-style-type: none"> <li>Case study period (2005 – June 2011) covered through document collection and analysis;</li> <li>Period covered retrospectively in interviews</li> </ul>	Case study period from July to December 2011: <ul style="list-style-type: none"> <li>2 interviews (repeated later on in the fieldwork);</li> <li>Transcription of interviews;</li> <li>Document analysis.</li> </ul>	Case study period from January to June 2012: <ul style="list-style-type: none"> <li>Most interviews were collected in this period;</li> <li>32 interviews, covering the current period and the previous Episodes in retrospective;</li> <li>Second round of interviews with key actors in Jun-July/2012 after completion of pre-tendering stage;</li> <li>Transcription of interviews;</li> <li>Document analysis.</li> </ul>
		3 meeting observations	8 meeting observations

## **6.7 Data Analysis**

### **6.7.1 Data management: storing, transcribing and translating (the case study database)**

For the documents collected and interviews undertaken, an annotated bibliography was prepared to facilitate storage and retrieval. A short summary (after coding and analysis) of the key information of each document and interview was attached to it in order to facilitate later identification (Jackson, 2001). A list of the interviews was also kept with clear specifications of time and place, and initials of participant's name and reference to his or her organization, which were used to protect their anonymity (Creswell, 2007). Digital data was downloaded and paper documents were scanned for digital storage in external drive, which was periodically backed up and stored in a password safe computer for security purposes. All written material, such as notes and signed consent forms, were scanned and digitally stored in the same way as the recordings.

Transcripts were prepared for every session undertaken using the software *NVivo* for qualitative data analysis. The use of transcripts facilitated the review, coding and interpretation of the data for an in-depth understanding of the way in which people articulated their ideas, so as to reveal explicit and implicit aspects, and not just the substance of their opinions (J. Mason, 2002 ). The transcription process involved simultaneous translation of the interview records from Portuguese to English, which was essential for the combination of the data analysis with the elements of the conceptual framework adopted for this research. Although the analysis was undertaken in English, there was constant re-engagement with the interview records in Portuguese to account for changes in interpretations for translation with the progress of data analysis. During transcription, important terms/sections were kept in both English and Portuguese; relevant observations were made about idiomatic expressions; and the main guideline adopted was 'readability', in order to account for the spoken words of interviewees in a way to help readers understand the perception of informants in the best light possible (Wolcott, 1994). Therefore, unless felt that procedural points, pauses and interjections could communicate something revealing, these aspects were edited out of the translated transcripts. Prior to field research it was also taken into consideration that transcribing was time consuming; and that information obtained and analysed during the transcription process could be useful for further interviews. Therefore, most transcription was undertaken during the fieldwork.

The processes of data coding and analysis involved three steps, some of them simultaneous: familiarization (Ritchie & Spencer, 1994), description and analysis (Wolcott, 1994). These are discussed next.

### **6.7.2 Familiarization: organizing and coding the data**

The stage of familiarization was an immersion in the case study database to gain an overview of their range, depth and diversity, while listening to recordings, preparing and reading transcripts and reviewing documents (Ritchie & Spencer, 1994). This stage also involved coding and organization of the material, and it started during the fieldwork.

When organizing and coding the documents, interview transcripts and meeting notes, a few questions were considered: what people, relations, events or situations are mentioned?; What are the meanings attributed to events?; What are the main (explicit or implicit) perceptions, opinions, interpretations being mentioned?; What new speculations, ideas or guesses about relations, actors or opinions are being suggested?; Where should the researcher focus more attention during future interviews?; and what sort of information and documents should be gathered for further analysis? (Silverman, 2000, p. 245)

The process of coding in the familiarization stage was divided in two sequential steps. First, from the review of transcripts, *codes* were assigned to interviewees' key words or sections, representing the type of comment (explicit or implicit opinions, biases, interpretations, perceptions, expectations, motivations and interests) and comments about other actors. There was also specification about type of relation between actors, if formal or informal, and especially specific episodes of interaction actors referred to or participated in during the pre-tendering process. For coding, the software *Nvivo* was used, which facilitated the categorization of themes, events and groups of interviewees, as well as the retrieval of specific and relevant themes through *Nvivo*'s search engine. Manual coding of the data was also used.

The initial focus for the organization and coding was the events to which actors referred. The primary frame for the organization and coding – and then carried on to the descriptive narrative and analysis stages – was the entire episode that enclosed the actions surrounding events (Pescosolido, 1992, p. 1105). In this way, it was possible to identify the patterns, combinations and sequences of decisions over the course of main episodes of interaction. An important focus for the description and analysis became how these episodes were socially constructed and organized.

Consequently, all the material was organized in chronological order, including pieces of transcripts, laws and other documents made available during the field research. This way it was possible to find the events and episodes that were mentioned by most people, most of the time. The chronological organization and coding approach started as the material was being collected during the process. It minimized the need to constantly re-read within and across the interview transcripts and documents to find and typify relations between actors and their ideas, opinions and interests (Jackson, 2001). However, in some instances, it was necessary to go back to the entire source for a better clarification of the meanings given by interviewees. Familiarisation was followed by description and analysis, which were also in chronological order. For these stages, it was taken into consideration as a constant reminder an observation by Wolcott (1994) that description and analysis are neither independent of each other nor mutually exclusive and that both involve some level of interpretation (p. 63).

### **6.7.3 Description**

The description stage referred to the construction of a narrative of the case study, including all complexities and contradictions found in the data collected during the field research. For the description, the data was studied, not merely skimmed, but it was not much transformed, keeping as close to the original sources as possible. The focus at this stage was on “What is going on here?”, according to the data collected and coded. It is important to mention that there was not the possibility of providing pure description since this is an interpretivist research. However, an attempt was made at being as truthful as possible to the original spoken word by interviewees so as to report the data based on the participants’ perspectives.

The description process was organized in chronological order linking comments, documents and actors into networks of relations for each episode of interaction mentioned in the transcripts and meeting recordings. All of the identified connections were described based on the references interviewees made to each other, the formal and informal relations identified, as well as the links based on commonalities or divergence of interests, biases, perceptions, expectations, etc. This chronological mapping process helped later to identify aspects in which actors reconciled interests or collaborated for a specific time, as well as diverging aspects which made the negotiation process more difficult. Since the focus of the research is on actor-relations, the chronological approach adopted reflected relational and not individual information. A focus on a single actor independently from the

others was meaningless in terms of a conceptual framework aimed at understanding actor-relations in an on-going process (Dempwolf & Lyles, 2011, p. 7).

The result of this process was a thick descriptive narrative of the case in chronological order which provided a comprehensive summary of the events based on the meanings participants attributed to these events. Five Episodes were derived from this process as shown in the table ahead:

Table 7 - *Descriptive Episodes of Interaction*

<b>Episodes of Interaction</b>	<b>Periods</b>
<b>Episode 1: Previous informal negotiations leading to scope definition and selection of the PPP as policy instrument</b>	2005 - January 2011
<b>Episode 2: Period leading to official start of the PRI pre-tendering process</b>	Jan 2011 – June 2011
<b>Episode 3: Formal period authorized for the formulation of the PPP project</b>	July 2011 – Nov 2011
<b>Episode 4: Period allocated for adjustment in the PPP studies</b>	Dec 2011 – Jan 2011
<b>Episode 5: Towards completion of the PRI pre-tendering process</b>	Jan 2011 – June 2012

#### **6.7.4 Analysis**

In the analysis, the focus was placed on the incontrovertible (Wolcott, 1994). This was the stage in which some information was considered worthy, while others were pushed to the background. In the analytical mode, the process of analysis became more selective than in description as some of the data received more attention than others. The details of the description included in the analysis were subjected to a critical judgment on whether they were relevant and sufficient to the account. According to Wolcott (1994), “our field data themselves, contradictory, subjective, unruly, partial as they invariably are, provide little basis for knowing the certainty. Subjecting them to rigorous analysis offers a way to achieve credibility” (p. 26). The analysis was aimed at making sense of the data in order to understand ‘what was central’ and ‘what was peripheral’ (Wolcott, 1994, p. 21). The main distinction between description and analysis was the handling of the material rather than simply putting the data together in chronological order; it involved the “breakdown and recombination of data” (Sandelowski, 1998, p.376). However, the

separation between description and analysis was not clear cut. It was an interactive process which led to the melting between the two. It was through a careful examination for contradictions and evidence from all the available sources (notes, transcripts and documents) that the descriptive data was turned into a descriptive-analysis.

The description focused on linking chronological events and their meanings as perceived by different actors; however there was no guaranteed meaning or purpose from this description. The analysis, on the other hand, gave the explanatory structure for linking these events based on the conceptual framework adopted for the research. For different episodes of interaction and for different elements of the 'systemic institutional arrangement' (policy, legal, organizational and strategic), it was possible to identify on what aspects actors agreed or disagreed with, their differences, commonalities, etc. This process went a step further to include, for each specific episode, the researcher's interpretation of the type and association between actors' comments, such as contradictory or confirmatory (information and actions versus shared thoughts and opinions), conflicting/diverging or supporting (actors' diverging interests, perceptions, etc.), common (opinions, perceptions, expectations, interests), etc. At this stage, the researcher systematically checked for connections between actors and their perceptions, motivations, interests, etc., which were made explicit by the respondents or derived from implicit associations uncovered in the process (Ritchie & Spencer, 1994). It was also at this stage, after analytical scrutiny, that multiple voices were gathered within the same group of actors (public, private, and technical/consultancy).

Some of the communication between the data and the reader was done through the 'eyes' of the researcher, according to the researcher's interpretation, with the use of the theoretical and conceptual lenses and filters explained in Chapters 4 and 5 (Creswell, 2007; J. Mason, 2002 ). 'Raw data' from interview transcripts were interpreted and not always made available in the body of the text as quotations, unless there was compelling reason to do so, such as the need for evidence to support arguments. As Wolcott (1994) points out, passing 'raw' rather than 'cooked' data and over burdening readers can be considered a cop-out on the part of a researcher who relies too tightly on the belief that data speak for themselves. As Sandelowski (2010) asserts, in qualitative research, "data never speak for themselves" and the researcher is not behaving unethically for interpreting them, as long as he or she does not avoid rigours and takes on the responsibilities and risks of interpretation (p. 79)

After this process, the five descriptive Episodes were compacted into three descriptive–analytical Episodes. At the end of each Episode, a summary of the account was provided for each element of the ‘systemic institutional arrangement’ (policy, legal, organizational and strategic).

Table 8 - *Descriptive-Analytical Episodes of Interactions*

Episodes of Interaction	Periods
<b>Episode 1: From initial informal negotiations to official start of the PRI pre-tendering process</b>	2005 - July 2011
<b>Episode 2: Formal period authorized for the formulation of the PPP project</b>	July 2011 – Nov 2011
<b>Episode 3: Towards completion of the PRI pre-tendering process</b>	Dec 2011 – Jun 2012

### 6.7.5 Interpretation

The previous stages of description and analysis also involved some level of interpretation in order to make sense of the data, but the attempt was made to remain as close as possible to the meanings attributed by participants to the events, relations, concepts and processes described and analysed. Another level of interpretation was also used in this research, which involved new meanings created by the researcher and explicitly shared in contributions and general implications presented in the Conclusion (Chapter 10). For this it was taken into account that final interpretative contributions do not have to be as tied to description as the analytical account, but it may also involve speculations about implications with a discernible link to the case study (Wolcott, 1994).

## 6.8 Validity and Reliability

### 6.8.1 Reliability: dependability

Reliability generally concerns the dependability and consistency of the research findings. It refers to the ability of another researcher to reach similar findings if the research is conducted based on the same methods and procedures. It is important to consider, however, that an interpretivist approach on a research allows for different but equally valid findings from different perspectives on the same phenomenon. Therefore, reliability in this qualitative and interpretivist research refers to the dependability of the data collection, analysis and interpretation that was undertaken by this researcher. The



data collection process based on interviews, meeting observations and documents, as well as the process of data analysis and interpretation, was documented in detail in this chapter to demonstrate consistency of the findings obtained. Additional information is also provided in the APPENDICES on meetings and interviews, including the dates on which they took place.

In order to account for the changing context in which the study took place, one of the strategies adopted was sampling saturation during the field research process. All public, private and consultancy/technical actors involved in the pre-tendering process were interviewed as the process unfolded, and some were interviewed more than once during the process. In addition to that, collecting, coding and analysing data happened simultaneously in a mutually interactive and repetitive way. Preliminary ideas, information and findings emerging from the data - as interviews were transcribed and analysed, meeting notes collected and documents reviewed – guided additional data collection and were constantly checked and re-checked by the new data obtained in the subsequent interviews. In this way it was possible to obtain additional information for cross-checking and to assure the consistency of the data.

Triangulation through the combination of methods was another strategy for assuring reliability (and also validity). Multiple methods, such as meeting observation, documents and interviews were used to assess the reliability of data obtained during the research process, but also in understanding the diverse construction of realities by the actors involved. The details that survived triangulation through the confrontation of complementary methods were carried on from description to analysis. The interactive approach of data collection and analysis and the selection of an on-going case study allowed for the tracking of the social construction of reality as the process unfolded. This was complemented by the recruitment of new interviewees as they joined the process and by the second round of interviews, in which changes in perceptions and opinions were accounted for.

### **6.8.2 Internal Validity: credibility**

Internal validity is about rigor and credibility in the research; it refers to the research design and to the role of interpretation. In this research, validity was not about pursuing objective truth, but it was a matter of faithfulness to the socially constructed reality as described by participants involved in the case study.

Considering the research design, methodological coherence was achieved by finding congruence between research questions and the types of the methods used. As explained in this chapter, the theoretical perspective and research questions match the methods, which in turn match the data obtained and the procedures for analysis which were informed by the conceptual framework adopted. Moreover, since this research aim was to engage in a deeper understanding of a phenomenon, a holistic single case study allowed this approach.

Another aspect worth mentioning is the iterative rather than linear character of the qualitative inquiry. The researcher followed suggestions proposed by Morse, Barrett, Mayan, Olson and Spiers (2002) and engaged in constant monitoring, confirming and verifying to assure rigour, in which it was necessary to move back and forth between design and implementation to ensure the fit of data with description, analysis and interpretation and to ensure congruence among research questions, literature review, interviewee recruitment, data collection strategies, and analysis. This approach was essential considering the fact that prior and during the field research it was not yet known that the process would reach completion of the PRI pre-tendering stage.

As for the role of interpretation, the use of qualitative research imposed a challenge for the researcher who interpreted interviewees' understandings of their realities, because she had to be aware of her biases and take those into account when interpreting interviewees' comments and views. Considering the result from the interpretation of interview transcripts, recordings and documents, the aim was to make a coherent analysis of the material in view of the initial concerns of the research about actor-relations. The researcher engaged in a reflexive process in order to make valid inferences from the data and to make sure that the account was as close as possible a reflection of the meanings given by participants. Actors told their versions of the story in the interviews, the researcher wrote the account based on what she heard and transcribed and on what the stories meant to her, but keeping interviewees' own words and concepts as much as possible and based on the theoretical and conceptual lenses adopted. The attempt was made to maintain the voice of participants as the dominant ones in the account so as to avoid a distortion of participants' own meanings by the effort at analysis and interpretation (Polkinghorne, 2007).

In addition to that, the 'thick descriptive-analysis' approach adopted for telling the account was an attempt at supporting claims through arguments based on the evidence

collected, but also to allow readers to shape their own thinking about the account and to assess its plausibility and accuracy. In this research, the descriptive part of the account referred to the voice of the participants; the analysis part was the voice of the participants through the eyes of the researcher. Nevertheless, as Polkinghorne (2007) argues, “the claim need not assert that the interpretation proposed is the only one possible; however, researchers need to cogently argue that theirs is a viable interpretation grounded in the assembled texts” (p. 484). Therefore, even in face of a well-supported documented account, considering the interpretivist character of the research, it is possible that another researcher could have interpreted the data in a different way and told the story differently.

### **6.8.3 External Validity: transferability**

External validity is about whether the findings obtained from this research can be transferred to a wider context. This was approached in this chapter with respect to the *holistic single case-study* of the municipality of Fortaleza, Ceara, Brazil. It is a representative case because the PRI pre-tendering process of infrastructure PPP formulation at the federal, state and municipal levels includes similar types of private, public and technical actors, similar legislations and legal and administrative procedures. Moreover, in all three levels there is embeddedness of project finance principles in the pre-tendering process in PPP legislations. The findings from the study of the case can also inform several municipalities in the North and Northeast of Brazil that face similar urban mobility problems in central areas involving parking issues, traffic congestion and illegal occupation of public spaces by street commerce. In addition to that, since the PPP project used for the case study has completed the pre-tendering stage of PPP formulation, from its revelatory nature lessons can be drawn to other cases that are still struggling to complete the process and to future processes based on the Procedure for Request of Interest (PRI) mechanism. This research will only attempt to transfer lessons from elements of the case that can be applicable to the formulation of PPPs in Brazil at the federal and state levels, as well as in other municipalities. This research will not attempt to transfer context-dependent elements of the case study. Contextual particularities will be used to exemplify, emphasize and shed light on the process-related aspects of project formulation, which are similar at federal, state and municipal levels in Brazil.

## **6.9 Brief summary of the chapter**

This chapter explained in detail the research strategy and methods used in this qualitative research. It covered the following aspects: the philosophical background of this research, the case study approach to inquiry, data collection (34 in depth interviews as primary method; documents and meetings as secondary), the data analysis process and issues of validity and reliability. The research designed and the data analyzed were aimed at answering the two research questions set out in Chapter 5 (section 5.1.2.):

1. How did actors' construct and enact a 'systemic institutional arrangement' through their relations? How did it influence actors in the completion of the PPP formulation process in the PRI pre-tendering stage?
2. What are the lessons learned for the formulation of infrastructure PPP projects in Brazil in the PRI pre-tendering stage?

The three chapters that follow present the findings from the research process, which are divided in three chronological Episodes of interaction (next table), to show the results of the in-depth exploration of the dynamics of actor-relations in the formulation of an infrastructure PPP project, using as case study the PRI pre-tendering process in the municipality of Fortaleza, Brazil.

Table 9 – *Link between Chapters and Phases of Interactions in the Case Study*

Chapters	Phases
Chapter 7: EPISODE 1 Actor-relations in the initial pre-tendering stage of a city centre PPP formulation: the construction of the 'systemic institutional arrangement'	Period between the 2005 (beginning of the first administration of the mayor in office during the case study) until July, 2011, when there was the official kick-off meeting that marked the beginning of the process.
Chapter 8: EPISODE 2 Actor-relations in the enactment and adjustment of the 'systemic institutional arrangement'	Period between July 2011 (kick-off meeting) until the submission of the PPP project design to the local government in November, 2011.
Chapter 9: EPISODE 3 Actor-relations in the re-adjustment of the 'systemic institutional arrangement'	Period of adjustments in the technical studies of the PPP project. This period started in December 2011 and finished with the publication of the PPP project for Public Consultation, in June 2012.

## **Chapter 7 - Descriptive-Analysis of EPISODE 1**

### **Actor-relations in the initial pre-tendering stage of a city centre PPP formulation: the construction of the 'systemic institutional arrangement'**

#### **7.1 Introduction**

This chapter is a descriptive-analysis of EPISODE 1 of the case study, covering the period between the 2005 municipal administration of Fortaleza until July, 2011, which officially marked the beginning of the PPP formulation process with a kick off meeting. It was during this period that public and private actors constructed the foundations of the 'systemic institutional arrangement' for the formulation of the city centre re-ordering PPP project, which was complemented in EPISODE 2. The discussion of this chapter is based on the four elements of the 'systemic institutional arrangement', following a chronological order: policy, legal, organizational and strategic arrangements. The last section is a summary of the main aspects of the analysis of EPISODE 1, focusing on the embeddedness and innovation in 'ways of thinking and acting'. The summary is organized around the same elements of the 'systemic institutional arrangement'.

#### **7.2 Policy arrangement: prioritizing PPP as policy instrument for the city centre urban mobility project**

This section analyzes the agreement on the infrastructure scope for the city centre re-ordering PPP, which happened before the selection of the PPP as policy delivery instrument. Two aspects are discussed in this section. First, it analyzes the construction of the policy scope, involving the urban mobility aspect of parking lots and the social infrastructure element of Popular Commercial Centres (PCCs) to allocate street vendors who irregularly occupied public spaces in the central area. Second, since the infrastructure scope was constructed prior the selection of PPP as policy instrument, this section also analyzes actors' decision to use PPPs as delivery tool for the city centre intervention.

### **7.2.1 The construction of policy scope: external influences and conciliation of interests**

In EPISODE 1, public and private actors agreed on the scope of the urban mobility policy for the city centre intervention based on complementary interests and awareness of interdependencies. The external forces that influenced the definition of the scope were policy and political priorities to solve the irregular occupation of central areas by street vendors and the urban mobility problems associated with increased traffic congestion in the city centre, irregularity of parking lots and absence of alternative parking options. It was also influenced by the economic and business scenario which attracted the interest of local businessman to investment in parking lots in the city centre. The policy and political forces were the city centre re-ordering (Reorganization) plan, pressures from control bodies, the media and society, the coming of municipality elections which required an improvement in the local administrations' credibility, especially due to its failure to deliver previous projects and lack of resources to implement the re-ordering plan.

For several years, the municipality of Fortaleza faced policy problems in relation to the city centre. Since the 1970s, the illegal occupation of public spaces by street vendors was a major issue approached by different local administrations (Dantas, 2005). Although they attempted to find solutions, it was never completely solved. When a mayor of Fortaleza was elected in 2005, she inherited the problematic situation of the central area and throughout her two administrations (2005-2008 and 2009-2012) a solution to the occupation of public spaces was strongly placed in the agenda as a priority.

The local government, through the City Centre Secretariat – the municipal body responsible for the administration of the central area–, tried to implement several organization initiatives, and also considered alternatives to build commercial centres to allocate street vendors. These alternatives were part of the re-ordering (reorganization) plan of the City Centre (*'Plano de Reordenamento do Centro da Cidade'*). Among the actions of the Re-ordering Plan, there was a focus on tackling the illegal occupation of public spaces by street vendors. Between 2008 and 2010, the local government tried to implement a solution through the construction of a commercial centre, known as the Centre for Small Businesses (*Beco da Poeira*). This solution received several criticisms from society, the media, street vendors and public sector actors. There were numerous problems with the new facility, such as a 40% decrease in sales of street vendors, inadequate physical infrastructure for the circulation of pedestrians, poor cleaning services

despite the maintenance tariff paid to the local government, security complaints and the robbery of street vendors' products (O Povo Newspaper, 2010; W. Ribeiro, 2011b). In October 2011, of the nearly 2100 boxes available in the Centre, 1600 were not occupied, as several vendors returned to the streets (W. Ribeiro, 2011b). Therefore, the main attempt to implement the Re-ordering Plan by organizing the situation of street vendors failed with the unsuccessful experience of the Centre of Small Businesses.

Interviews revealed that private and consultancy actors also perceived a clear political interest of the public sector in a city centre intervention for organizing the situation of street vendors. Those interests were directly related to local administration's attempts to improve its credibility with society considering that 2012 was a municipal election year. Perceptions in the local context that the local administration had failed to deliver promised projects and to solve city centre problems had already reduced the administration's credibility with society. The media published several newspaper articles about the problems the local administration and street vendors had been facing with the Centre of Small Businesses. The City Centre Secretary mentioned in interview her opinion about this: *"There is already this example of the Centre of Small Businesses, which is an unsuccessful example. The local government spent a lot of money to construct it, to operate it, and it gives a lot of headaches"*.

The political interest was also influenced by pressure from control bodies on the local government for an urgent solution to deal with city centre problems. The notifications received by the local government were frequently covered by the media, which had been highlighting the issues in the central area over the years, as well as the municipality's incapacity to find a long term solution. Moreover, in September 2009, control bodies notified the City Centre Secretariat to solve the illegal occupation of public spaces by street vendors in the city centre, which was infringing the local urban legislation (municipal Law of Land Use and Occupation) (Law n. 7987, 1996). Interviewees acknowledged the pressures from control bodies, the media and society on the local government.

In addition to that, because 2012 was an election year, private and consultancy actors were aware of the increased political interest of the local administration to engage in a project that was recognized as priority by the local society, in order to help improve its credibility and the chances of the mayor's successor being elected. They reflected in the interviews on the importance of the city centre project to the local government, especially to the mayor and city councillors. As a result, there was a perception that the political

interest of the local administration was aimed at capitalizing on a policy intervention not only to solve city centre issues, but also to improve its local credibility near an electoral year. These actors perceived that since society had long expected policies to discipline the situation in the city centre, the government visualized a political opportunity with the PCCs.

According to the interviews, the political will of the local government was initially directed at commercial centres. This perception resulted from the social orientation of the local administration of the Worker's Party, which was politically committed to street vendors (as both electors and citizens). Therefore, a solution to the illegal occupation of public spaces was considered an issue that the '*city claimed for*', which had become a policy and political priority.

Consequently, following pressures from control bodies and society and with the proximity of the election year, the local government increased the focus on trying to find financing alternatives for the construction and operation of new popular commercial centres. After receiving notifications from control bodies in 2009, the municipal government started to mobilize to solve the situation. In several occasions, as covered by the local media, the mayor expressed the need to acquire properties for the construction of commercial centres, her commitment to city centre business owners and that the operation of PCCs would most likely happen via concession to the private initiative in order to reduce the financial burden on the local administration (Moscoso, 2010).

The public sector interest in the policy intervention with the participation of the private sector was influenced by the need for additional sources of funding for constructing PCCs, because the resources available through tax collection or federal government transfers were insufficient. The City Centre Secretary expressed this in interview:

*The idea was due to government lack of resources. Since the Brazilian State has a responsibility for providing basic services [i.e. health, education], this is heavy on the State's budget, especially considering the need to split resources among cities, and it's worse for the urban aspect. Cities are poor. Whatever the local government gets from tax collection is not enough to fund its basic public policies and to pay for the structure of the state. So for the urban public policy there is even less money available. (...) The municipal government has a scope, which is to provide the social welfare of the population; but in order to do this the money has to come from somewhere.*



While since 2005 the local administration faced increased pressure from society, the media and control bodies, an increased interest from local businessmen started to develop for a business opportunity in the city centre involving parking lots. The shortage of parking spaces and the high number of vehicles circulating in the area attracted the attention of local private investors with experience in the operation of parking lots. It was common knowledge in the local context that the urban mobility situation in the city centre was problematic, that the existing parking lots in the city centre were irregular and that it was a profitable business.

For the public sector, it was also politically important to solve the situation of parking lots. The media constantly covered the difficulties the municipality faced with the irregularity of parking lots in the city centre. Most of these lots operated in precarious conditions, did not have the necessary municipal operation licenses, did not follow local legislation for parking facilities and did not pay the required taxes to the municipal authority. In 2009, the City Centre Secretariat also received notifications from control bodies to solve problems related to accessibility and mobility in the city centre, including the situation of irregular parking lots in the area, which were infringing the local urban legislation (municipal Code of Works and Postures) (Law n. 5530, 1981). Since 2006, the media had frequently covered mobility problems in the city centre as the population complained about the irregular occupation of sidewalks by drivers and insufficient number of parking spaces (Diário do Nordeste Newspaper, 2006; Wanbergna, 2006). At that time, the municipal government, under the first administration of the mayor (2005-2008), guaranteed that it would address these demands. Nevertheless, with no effective solutions from the local government, these problems only got worse over time.

The local government considered the situation of irregular parking lots complicated to solve. The City Centre Secretariat was aware that it could only notify and close those lots if it could provide parking alternatives to the population. It was difficult for the local government to intervene and close the irregular lots because they attended – and were even insufficient for – the high parking demand in the area, despite their inadequacy and irregularity. Public sector interviewees explained that the provision of regular parking services would create the appropriate conditions for the local government to close irregular parking lots in the central area.

A group of local businessmen, who became private investors for the city centre PPP formulation, visualized parking lots as a lucrative business opportunity. From their

international experience of observing parking lots in city centres worldwide, they had an embedded perception that it could be a solution to the shortage of parking spaces in Fortaleza's city centre, as the next quote illustrates:

*One or two years ago, I took two trips, one to Berne on the way back from China, and the other to Zurich. In both cities, I parked in underground parking lots, one below a square and the other in a building next to a train station; very expensive, but very modern. And then I thought about Fortaleza, I thought: 'In Fortaleza there aren't parking spaces in the city centre. It's very complicated.' So I kept that idea in mind (private investor 1).*

The group of local businessmen also understood that the majority of parking lots were irregular. They were also aware that the local government had not taken the initiative to close them because of the lack of alternatives. Therefore, they proposed to the municipality a solution that involved the provision of regular parking services in compliance with local urban legislations (the municipal Code of Works and Posture<sup>3</sup>) (Law n. 5530, 1981).

Public and private actors recognized that they were involved in a situation of mutual dependency. Local businessmen knew that they needed the political will of the local government in favour of private investment in regular parking lots. For this, the municipality made it clear that their policy priority for the PCCs was an important pre-requisite. Based on mutual interests and awareness of their interdependencies, actors decided to join PCCs and parking lots as the project scope of a policy intervention in the city centre. They relied on the dependency of the private sector on the political will of the local government and on the dependency of the public sector on private finance for the implementation of a city centre re-ordering project. The scenario presented next reflects actors' conciliation of interests for the inclusion of PCCs and parking lots in the infrastructure scope for the city centre urban mobility intervention.

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<sup>3</sup> Article 1 - This Law legislates on the execution of public and private works in the Municipality of Fortaleza, on measures of administrative police under the jurisdiction of the municipality. It legislates with respect to the public order, hygiene, installation and operation of equipment and activities in view the following objectives: I. to ensure proper conditions to basic activities such as housing, circulation, recreation and work. II. To improve the environment, ensuring minimum conditions of comfort, hygiene, safety and public welfare, on buildings or any works and facilities within the municipality. Article 2 - This Law refers to urban postures and requirements applicable to works in general in the municipality, without prejudice to the provisions set forth in Law of Land Use and Occupation (Law n. 5530, 1981, own translation).

Conciliation of interests between actors was the main socially constructed institution that influenced the preference for the PPP instrument. The analysis of the perceptions, opinions and interactions of public and private actors involved in the case study demonstrate that through informal interactions public and private actors were able to reconcile interests, overcome biases and assumptions, and reach an agreement on the urban mobility infrastructure scope of PCCs and parking lots for a city centre intervention.

Actors perceived the PCCs and the re-reordering plan as the initial point for the definition of the city centre intervention scope, but through informal interactions with actors in the local government, private actors were able to demonstrate their interest in investing in regular parking lots in the central area to help solve urban mobility problems. Since the public sector had PCCs as a priority in the agenda, local businessmen were persuaded of the need to invest in the construction and operation of PCCs as well, in order to secure the political will of the municipality for an intervention that involved the provision of parking services.

In 2011, a group of local businessmen of different companies informally contacted the City Centre Secretary and confirmed that the public sector had the interest to implement a city centre policy with the participation of the private sector. The interviews revealed that through informal interactions, local businessmen, the Secretary and the general director of a local consultancy exchanged ideas that led to conciliation of interests and agreement on a policy scope that responded to actors' interests and interdependencies. The following comment by a private investor clarifies this aspect:

*It first started with the commercial centres. I have a good contact with the City Centre Executive Secretary, and she told me about the problems related to the street vendors. She was already emptying a few areas, and the municipal government does not have the money to do this. The Secretary already knew the general director of the consultancy, and they started talking, and one conversation led to another, and that's how the idea came about. (...) So, I believe that it started from several people approaching the municipal authority about this intervention, and the idea started to grow (private investor 2).*

Local businessmen expressed to public actors that they understood the importance of the PCCs for the municipality, especially considering the responsibility for answering to the demands of street vendors. The next interview comment by a private actor shows their

awareness with respect to the political importance of PCCs to the local government and the expected result of a policy intervention for the city centre:

*No municipal authority will want to break ties with street vendors, since they are electors. (...) So I think, 'can you remove them?' No. So if you can't remove them, you must organize them. You must create conditions for them to work, to become formal workers. In this way it is possible to have a more organized city centre" (private investor 1).*

The interviews with private actors show that they knew the importance of commercial centres for improving credibility of the local administration with society near an electoral year. They were aware that the media, society and control bodies were publicly demanding the completion of unfinished projects and a solution for city centre problems. For private actors, the mayor could take advantage of the city centre intervention to overcome negative perceptions of her administration and help in the election of her successor. The next comment reflects this perception:

*The important thing is the public sector must buy the idea; and the mayor bought the idea. She wants this because she knows it is politically good. She will soon start the 'Beira-Mar' project, but won't finish it. She started the 'Santa Terezinha' project, and stopped. (...) But people forget the past if she delivers projects even if delayed. And then she'll say: 'The solution for the street vendors is here' (...). She is really good at selling the idea (private investor 1).*

As a result, private actors promptly agreed with the inclusion of the PCCs because they recognized the importance of obtaining cooperation from the local government for the approval of parking lots in the scope. For private actors, developing public sector political will in favour of parking lot intervention was a crucial aspect. The following quote exemplifies private interviewees' understanding that political will was an important mobilizing factor: *"I think that political will comes in first place. In reality if it weren't for this political will, we would not be where we are today. The idea would have died in the beginning" (private investor 5).* Investors interpreted the joint scope as an exchange of interests that would benefit both sectors. The following comment from a private interviewee reflects this perception:

*I think the discussion over where to put street vendors has been exhausted, one day 'let's put them here', the other day 'let's put them there'. Obviously, it came at the*

*right moment. Both projects are complementary. For the municipality, it is very important that the situation of the street vendors become regularized. In parallel, the city centre needs parking lots, because the ones working there today are all irregular, no security. So it is good for the municipality and for the private sector (private investor 4).*

Moreover, according to private interviewees, they considered the construction, operation and management of the PCCs a “*small business*”, easy to be implemented and administered, while the parking lots was perceived as a more complex but highly profitable. They also knew that there was an interest from the local government in the parking lots due to the chaotic mobility situation of the city centre. Private investors mentioned in the interviews that the inclusion of the PCCs in the scope was “*a means to an end*” (private investor 1) and a way to avoid confrontation with the public sector and to “*prevent the municipal authority from creating any difficulties*” (private investor 2).

Since private actors agreed with the PCCs, the local government also accepted the inclusion of parking lots in the infrastructure scope of the city centre policy. Interviewees from the public sector recognized that the local government used the parking lot aspect of the scope because it needed to find a way to attract private resources for the construction of PCCs. As the interviews showed, public actors wanted to combine parking lots and PCCs so that the private initiative could earn enough financial return from the profitable parking lot business in order to compensate for the smaller return from PCCs. They knew there was an official and legal rent ceiling on the amount the private initiative would be able to charge from street vendors for a space or box in PCCs (set at R\$ 104 (or approximately £ 30) (Decree n. 12848, 2011). They also knew that the parking lot tariffs would be determined based on more flexible market prices, which had already attracted the interest of the private initiative.

Consequently, the public sector considered that the inclusion of the profitable parking lot business in the policy scope would reduce the need of a complementary compensation from the local government to make the intervention financially feasible. Besides that, it was also an alternative to the irregular parking lots operating in the city centre under precarious conditions and not paying taxes to the municipality. For the public sector, reducing the burden on the municipal budget, solving the city centre mobility situation and finding alternatives for the irregularity of parking lots was a complementary aspect to the construction of commercial centres for the implementation of the re-ordering

plan. For them, it was, a 'bonus', or the 'cherry on the cake', as interviewees from the public sector emphasized. The PPP Unit Secretary also explained this:

*It was noticed that to fulfil a necessity of the municipality, which was the removal of the vendors from the streets, there would be no private investor interested in only that, 'how would they pay that bill?'; and we have the idea to reduce the payment burden on the municipal government. So it also came from the existing city demand for parking spaces. It's very complicated, because all the parking lots are inadequate, irregular. So there is a demand in the city centre for parking spaces, and there was a business opportunity. By adding the revenue from both projects, from the parking lots and from renting boxes in the PCCs, it would develop private interest in constructing PCCs and parking lots. So it was based on a demand from the municipal government, and they saw the business opportunity. They visualized this.*

The inclusion of parking lots in the scope also involved the persuasion of the mayor. Actors were certain that the mayor was mainly interested in the PCCs and that she had to be convinced that the construction and operation of only PCCs would not make the intervention attractive to the private initiative. However, it was clear from the interviews that public actors were convinced that for the mobilization of private financing, which was essential to make the policy intervention feasible, it was crucial the inclusion of parking lots in the scope. Actors also mentioned that the mayor understood this argument. The following comment from an interview with a private investor illustrates this:

*The mayor, in the beginning, only wanted to implement the PCCs; but it was shown to her that the private sector would not be only interested in the PCCs, because the private initiative would spend a lot of money to implement it, but it would charge a 'social amount'. (...) On the other hand, when you charge an amount the market accepts, it's easier to earn profit and also to pay for the costs of the PCC, in which you will also have to invest (private investor 1).*

As the interviews revealed, awareness of mutual interests and interdependencies led to conciliation of interests and joint construction of the infrastructure scope for the city centre intervention. Based on public and private actors' capacity to conciliate their interests, the city centre policy scope was generally defined as the construction, operation and maintenance of PCCs and parking lots. During the time of these initial discussions, the

possibility of using the PPP instrument for policy delivery was still not specifically being considered.

### **7.2.2 The selection of the PPP as policy instrument: overcoming biases and the use of rules of appropriateness**

Actors selected the PPP instrument because of its perceived advantages to meet their interests over the traditional policy delivery tools available. It was obvious to interviewees that the municipality had urgency in solving the situation of street vendors, but lacked the necessary resources for the implementation of PCCs. Contracting out via the traditional procurement method (traditional bidding 8666 Law and common concession 8987 Law) was ruled out by public actors due to perceptions of it being a highly bureaucratic process, and more costly to the local government than the PPP instrument. The analysis in this section shows that the selection of the PPP instrument was based on the overcoming of existing biases and lack of experience, as well as on the influence of embedded rules that indicated the PPP instrument to be more appropriate for the situation at hand than other options available.

For the local public sector, among other alternatives the PPP instrument was preferable because it allowed the private initiative to invest in the construction and operation of PCCs and parking lots in a single operation, which was a way to accelerate the contracting out process for the implementation of the project. The traditional method, on the other hand, separated the procurement for construction from the procurement for service provision, such as operation and maintenance of facilities. Under the traditional procurement instruments, the public sector would have to separately hire a private builder to construct the new PCCs and parking lots through the traditional tendering law (8666 Law). As for the operation and maintenance; the local government had already expressed its unwillingness to directly provide these services due to the unsuccessful experience of the Centre of Small Businesses. Consequently, it would have to engage in another bidding process to hire a private company for operation and maintenance of the facilities. The interviews revealed that actors recognised that facing two separate bureaucratic bidding processes would take longer than desired by local public actors. For private and consultancy actors, this was influenced by the administration's need to build up its credibility with society near the election year of 2012. Interviewees also realized that the federal PPP Law of 2004 could be used as an instrument that permitted to hire the private company in a single bidding process for service provision and construction of public works.

Public interviewees also acknowledged that under the traditional 8666 instrument for hiring the construction of the facilities, the local government would have to pay for the public works immediately after the completion of the PCC facility, absorbing the entire capital expenditure costs of construction and increasing the burden on the already constrained municipal budget. Under the PPP instrument, however, these costs could be transferred to the private sector, which would obtain its financial return – also for construction costs - throughout the contract execution for parking and PCC service provision. Moreover, under the PPP, the local government would only need to pay any pecuniary compensation after the beginning of service delivery, delaying immediate public expenditures with the initiative. As the following quote by the City Centre Secretary illustrates, interviewees from the local government involved in the discussions understood that the traditional procurement instrument would be burdensome on the municipality:

*If we were going to try to do it through the 8666 Law, it would be impossible, because the local government would have to be in charge of everything, of construction, compulsory purchase. Imagine a municipality like Fortaleza absorbing a financial burden from an activity that has to be necessarily explored by the private sector, because this is not the responsibility of the public sector, to operate parking lots or rent boxes in centres of commerce. So then the local government absorbs a very high burden. It is impossible; without the participation of the private initiative, this project will not happen! It won't because the municipality of Fortaleza won't get such a large amount to invest in this activity.*

The local government wanted to reduce as much as possible its short-term financial burden and expected the financial return of the private initiative to come mostly from the tariffs charged to users of parking spaces and tenants of boxes at PCCs. However, public and private actors were aware that to use the Federal PPP Law as policy instrument for its perceived advantages, the government would have to partially compensate for the service provision by the private sector. As explained in Chapter 2, the PPP legislation determines that the instrument can only be used for the delivery of non-self-sustainable projects, in which pecuniary compensation from the government is completely or partially required to cover the costs of service provision. If public and private actors had decided to design a policy in which all the private compensation would come from tariffs charged to users of PCCs and parking lots, they would not be able to use the PPP instrument. Consequently,



actors agreed that some compensation from the local government would be included in the project design so that actors could take advantage of the PPP instrument.

Even though the actors involved in the discussions selected the PPP as policy instrument, it was a common aspect in the interviews that public and private actors lacked experience in PPP. However, they were able to overcome their inexperience and insecurities due to lack of knowledge and agreed on the use of the PPP instrument. According to the interviews, most private actors lacked experience in either PPPs or public-private relations prior to this involvement. They commented on their lack of PPP knowledge or lack of experience in public-private relations, which were overcome as they decided to continue in the process. Common remarks included: *"It's complicated for me to evaluate this, since I'm new at this"* (private investor 5) and *"I can't speak much of it because I don't have much experience. This has also been my first PPP, so I want to see what will happen afterwards"* (private investor 4). There were also comments such as *"I'm still learning about the public sector"* (private investor 8); or even *"I've never worked with the public sector, and I don't understand about the public sector"* (private investor 2). However, this did not prevent actors from deciding to engage in the PPP policy formulation. As the interviews demonstrate, private actors believed that the PPP instrument was the best fitted selection for this context. This interview comment by a local businessman reflects this perception: *"I'm not praising the PPP because I'm part of one now, but it's the only way I see it, because the government doesn't have the capacity, especially our local government, to manage construction works"* (private investor 1).

The interviews also reveal the perception that the general director of the local consultancy acted as an institutional entrepreneur and was essential for the introduction of the PPP theme in the political agenda through his persistence over the years in trying to 'sell' the advantages of the PPP instrument in the state and local governments. The consultancy general director considered the PPP Law an important public policy tool; a mechanism to help the public sector mobilize complementary resources and capacity for the provision of services, as well as a way of providing interesting business opportunities to the private sector. An interviewee expressed this in the following comment: *"To be honest with you, investors didn't get interested in this PPP intervention because they knew PPPs. It was because the general director showed them that it could be interesting. It was based on discussions, talks"* (private investor 6).

The director of the local consultancy had been trying to introduce the ideas of PPPs in the local government agenda even before the decision to use the PPP instrument for the implementation of the city centre re-ordering policy. He had tried to incorporate the PPP theme in the local agenda since the first administration of the current mayor (2005-2008). In 2005, he prepared a document entitled the PPP Regulatory Framework with general PPP guidelines for the local administration, which received the political support from the local Finance Secretary and the Secretary of the Municipal Management Unit (which later became the PPP Unit). In 2009, his company also contributed in the pre-tendering preparation of the first PPP project of the Ceara state government, the football stadium; and elaborated the state government's PPP Manual, with guidelines and procedures for PPP project formulation. An interviewee from the private sector shared his perception of the consultancy director in helping to introduce a culture of PPPs in the local context:

*The consultancy director in my opinion was pioneer. I tell him, 'You have been the pioneer and almost a lonely preacher, trying to show people that this was a very interesting tool that could bring several gains, not only economic, but in terms of growth and development to transform the municipality and the state in top managers (...) This PPP was a result of the work of some time, perhaps years, in which the general director was pressing on the same key, doing seminars, meetings, not wasting any opportunity to talk to people.*

Public and private actors focused on the perceived benefits of the use of the PPP instrument to overcome their own insecurities from lack of experience in PPPs. This was not only the first involvement of private actors with the PPP instrument, but it was also the first attempt of the municipality to use PPPs as policy delivery tool. As the interviews showed, there were also insecurities from the side of the public sector. The following quote from the interview with the City Centre Secretary illustrates this:

*Even within the administration, there are difficulties to overcome in relation to the understanding that the PPPs cannot suffer biases. (...) Some say 'Oh my God, I'm scared that we are inviting the private sector.' So there are still obstacles to overcome, regarding the acceptance of the instrument.*

Interviewees also mentioned that due to 'the novelty of the PPP' theme, actors still resisted the innovation of PPP procedures because of comparisons with the bureaucratic procedures of the traditional 8666 Law. This is demonstrated by the following comment:

*Another thing is the novelty of the PPP. There is no PPP practice. Today people walk on eggshells to authorize this, to understand it, but they don't understand it. They often associate it with the 8666 Law. They are thinking in this context, but they always base their ideas on the 8666. And the 8666 only complements some of the PPP procedures. The PPP is much freer, much more comprehensive than the 8666 (private investor 6).*

Despite insecurities and perceptions of resistance, actors thought they could overcome them based on the political will in favour of the city centre intervention and the lack of public resources to implement the policy without private financing. Private investors relied on their own perception of the necessity of policy solutions to the problems of the city centre to overcome feelings of insecurity. The following interview comments show that private actors were certain of the priority of the city centre intervention for the local government and society. Perceptions of urgency motivated private actors to continue in the process despite insecurities created from lack of experience in PPPs: *"Why is it that everyone is scared of an unknown business? We are not as scared as before because it's a business that the city needs. 'No park, no business', no arguments against that! (private investor 1).* Another investor confirmed this perception:

*Wherever you go, if you go to the Chamber of Business Leaders [a city centre association of business owners], to the people who actually go to the city centre, the city wants this. So it is not enough if you only have the political will, the business will, but it is something that the city doesn't claim for (private investor 5).*

The interviews show that it was expected that the policy priority and the interdependence between the public and private sectors would help actors deal with insecurities during the formulation of the PPP policy. Public and private actors recognized their sources of insecurities and tried to overcome them early in the process in order to continue with the formulation of the city centre PPP project. This process of overcoming insecurities continued throughout the entire pre-tendering process.

### **7.2.3 Summary of Section**

Although public and private actors lacked experience in PPPs, this did not prevent their decision to continue with the PPP formulation. Public and private actors' conciliation of interests for the agreement on a social and urban mobility infrastructure scope was influenced by their complementary interests and awareness of interdependencies. The public sector priority on PCCs was perceived as response to the pressures from control bodies and a way to improve its credibility with society near an electoral year. However, for the implementation of a city centre policy, the municipality depended on alternative sources of funding, so the participation of private financing started to be highly considered. The private sector, in its turn, had developed a specific interest for the parking lot business in the central area, and had made its interest clear to actors in the local government. Actors were able to conciliate their interests and agree on the urban mobility scope for the city centre intervention. They were also able to overcome insecurities and lack of experience in public-private relations in order to select the PPP instrument as policy delivery tool. As next section will show, after choosing the instrument, actors decided on the Procedure for Request of Interest as the mechanism of project formulation.

## **7.3 Creating the legal arrangement for the process of PPP formulation**

The municipality of Fortaleza had no PPP legal framework or PRI Decree when the local government decided to use the PPP instrument and the PRI mechanism for the urban mobility city centre intervention. After actors agreed on the scope of the city centre PPP project, they also agreed that the PPP instrument was the most appropriate tool for policy implementation. As a result, they mobilized for the improvisation of a local legal framework that allowed them to use both the PPP instrument and the PRI mechanism for the formulation of the city centre re-ordering project.

This section will discuss the selection of the Procedure for Request of Interest (PRI) perceived as the appropriate mechanism for public and private actors. The decision was influenced by perceptions of the following aspects: (1) difficulties imposed by the structure of federal resource distribution for the elaboration of public projects; (2) bureaucratic procedures of the public administration for the elaboration of projects; and (3) culture of distrust between public and private sectors in traditional tendering procedures. This section will also show the improvisation of a local legal PPP framework preceding the PRI

publication, which invited private companies to express interest in formulating the PPP project. Since the case study was the formulation of a municipal PPP, it was more complicated than state and federal cases because it required the publication of an additional law authorizing the concession of services to the private sector prior to the official start of the pre-tendering process. The mobilization happened before the official PRI publication on March 25, 2011. The selection of the PRI as mechanism for the city centre PPP policy formulation is analyzed next.

For public sector actors, the PRI mechanism was an important alternative to deal with difficulties to access projects by local governments for policy implementation. The interviews with public actors reveal that these difficulties were mainly related to the structure of federal resource distribution and to bureaucratic procedures of the public administration. Due to impediments in obtaining projects of quality, it was argued in the interviews that local governments commonly relied on outdated projects.

According to embedded perceptions of interviewees, local governments usually receive federal resources directed to the municipality by elected officials in Congress, but these resources are strictly tied to specific interventions of public works, selected by these officials and cannot be used for any other policy intervention. On the other hand, those resources frequently return to the federal budget because the local governments lack adequate projects to implement the policies to which the federal resources are tied. Several interviewees mentioned that it was common for entities in the local government to choose any project (outdated, of poor quality), not to lose the federal funds, preventing it from returning to the federal budget.

Interviewees also mentioned that local governments in Brazil had to deal with the bureaucracies of the public administration that made access to projects difficult. Actors explained in the interviews that these procedures were time consuming for obtaining projects to be used in bidding procedures for contracting out public works. According to interviewees, the public sector had to either internally prepare the projects or hire through public procurement a company for the preparation of each project. The municipality of Fortaleza, for example, tried to solve these bureaucratic impediments by hiring a project office for the entire municipality. However, the high demand for new projects within the local administration often resulted in some departments not being attended to, so they had to rely on outdated projects for tendering processes. Therefore, as the interviews with public actors show, the PRI mechanism was perceived as an important alternative for the

preparation of policy projects. In interview, the legal specialist advisor of the City Centre Secretariat elaborated on the relevance of the PRI for the municipal administration:

*Everything is an impasse; in the public administration, nothing is so easy because the big problem in the public administration is related to the studies, the projects. In fact, sometimes we have the resources to do certain public works, but we don't have the resources to do the project. So we become hostage of this situation. (...) The PRI would be able to solve, to facilitate this issue related to projects, which for us is very important, because it would help us through a huge effort to get things done here (...) From this perspective, the PRI is the "light in the end of the tunnel", because you are able to select a company to prepare all the studies, the entire feasibility of that initiative, including the projects, which is the most difficult part. This is included in the cost of the PPP. This is an important advantage of the PPP.*

For public and private actors, the selection of the PRI mechanism was also perceived as a way of overcoming distrust in the relations between the public and private sectors with respect to public procurement projects. As the interviews made it clear, actors perceived that the PRI mechanism allowed a more open debate with the public sector during project preparation to discuss the details of the project's budget, costs and spreadsheets in comparison to the traditional 8666 Law. According to the traditional tendering law, there can be no joint negotiation over project scope and preparation between the public sector and possible tendering competitors. This law also determines that if a company is responsible for preparing a policy project or public work project, it cannot participate in the tendering competition for the execution of that project (article 3, items I and II, Law n. 8666, 1993). Based on the traditional tendering Law, the public sector prepares the project and publishes it for public procurement, and the winner of the tendering competition must execute the project previously elaborated by the public sector; there is no joint construction.

Nevertheless, based on the PRI mechanism for PPP formulation, there can be communication between the parties in the pre-tendering stage. The private company investing in the project formulation and interacting with the public sector may also participate in the official tendering process (article 31, Law n. 9074, 1995). This possibility was perceived by interviewees as a transparent process and as a way of overcoming distrust between public and private actors in relation to projects. Moreover, because public and private actors perceived the PRI mechanism as a favourable alternative for project

preparation, it also contributed to the overcoming of insecurities and to their increasing commitment to using the PPP instrument as delivery tool for the city centre policy.

According to the interviews, private actors were motivated by the PRI because they could be responsible for preparing the technical studies and projects in order to assess the feasibility of the PPP intervention. They associated this possibility with greater security, legitimacy and transparency compared to the traditional procurement procedures under the 8666 Law. The next interview quotes illustrate their perception in relation to the PRI:

*We see every day in traditional tendering processes the government presenting basic projects which give no condition for the private sector to prepare budgets. I think [the PRI] is extremely positive, because we have time to study, to prepare it. So the thing becomes very clear and defined. I think it's more secure. (...) This condition of the PPP is extremely more secure for the companies that are participating (private investor 4).*

*I think that in Brazil, the PRI legitimizes this relation between the public and the private in a way that is absolutely transparent. It is possible to legitimize a process that already used to happen as routine, which is the relation between the public and private. (...) These relations used to be constructed in a very obscure way, and now it is possible to manifest interest, to get approval to develop these technical studies and to participate in a tendering process, in which you can win or lose. In my opinion, this is the highest point of transparency (private investor 7).*

After actors agreed to use the PRI mechanisms for its perceived benefits, they had to publish a special law authorizing the concession of the city centre urban mobility services to the private initiative. Moreover, since the municipality had no local PPP law, the local administration took advantage of the possibility that Brazilian municipalities can use the national PPP law as a supplement. For the approval of the special municipal law authorizing the concession, public actors informally contacted the City Hall to accelerate the publication. The interview comment from the PPP Unit Secretary demonstrates this:

*The lawyers from the PPP Unit went there to talk to him, and I also talked to city councillors, to the president of the City Hall, and said, 'President, it's necessary for you to sign this at the City Hall'. It was a general movement to arrive at the approval and at the publication of this law.*

This law had to be published prior to any official procedure by the local government for hiring the private initiative for the formulation of the PPP based on the PRI mechanism. Therefore, on March 4, 2011, the City Hall passed the municipal Law 9741 authorizing the *“municipal Executive to contract, operate and maintain social and commercial infrastructure of public interest in the centre of Fortaleza, under the concession instrument”* (Law n. 9741, 2011). This law authorized the municipal government to use the PPP instrument exclusively for the construction and operation of parking lots and popular commercial centres in the city centre. At this stage, this was the only formal legislation in the case study arrangement, considering that the municipal PPP Law was only published on June 16, 2011 (Law n. 9783, 2011).

On March 25, 2011, a few days after the informal mobilization with the City Hall, the local government officially launched the PRI publication that invited private companies to express interest in formulating the city centre PPP (PRI n. 01, 2011). The private initiative had fifteen days to prepare and submit a PRI proposal for analysis by the local government. The mobilization between public and private actors shows that the absence of a local law on PPPs was not an impediment for their continuity in the pre-tendering process of PPP formulation. Although actors were able to improvise a legal framework for the use of the PPP instrument and PRI mechanism, they engaged in the pre-tendering process under a fragile formal arrangement, without clear knowledge about legal rules and conditions for the formulation of PPP projects. This was also the case with respect to the organizational arrangement since the local culture on PPPs was still under construction and actors had limited information about roles and responsibilities in the process.

#### **7.4 The local organizational arrangement and human capacity for the PPP formulation**

The PPP organizational framework for the case study, with roles and procedures to orient public actors in the process, depended on the publication of a PPP Decree, which was still under construction during the pre-tendering stage. Despite the fact that the PPP Decree only officially created the PPP Unit in December 2011 (Decree n. 12886, 2011), the Municipal Management Unit of Fortaleza had started to informally embody the role of Municipal PPP Unit since 2005 and had been trying to develop a PPP culture in the local administration.



The team of the unofficial PPP Unit participating in the pre-tendering stage was composed of public servants with specialized knowledge on subject areas such as economics, engineering, law, etc. On the other hand, in EPISODE 1 the local PPP culture was still under construction, and public actors were developing the willingness to learn about PPPs and were not sure about their roles in the process. Although the PPP Unit gathered a team of specialists, they did not know how to monitor and follow the preparation of a PPP project. The decision to engage in the PRI pre-tendering process was not accompanied by a simultaneous cultural adjustment in the local administration, especially considering that the city centre intervention was the first PPP of the municipality and actors lacked experience. It was a recent initiative to try absorbing this culture in the local administration. A constant in the interviews with public actors was a perspective similar to the following: *“In reality, like everything, this is a process that is happening for the first time, so in the municipality this was a learning process for us”* (private investor 1). Another interviewee from the public sector mentioned:

*In fact, we first started studying the subject, because we are initiating in the municipality of Fortaleza the area of Public-Private Partnerships. This is the first time that we are actually preparing a PPP, which will start with this one of the parking lots and PCCs in the city centre (PPP Unit legal specialist).*

The fragility of the local PPP (legal, organizational) arrangement influenced the reliance of public and private actors on the local consultancy for coordination and organization of the process of PPP formulation. The local consultancy had been helping the Municipal Management Unit to develop a PPP culture in the local administration, and also helped to train the team on PPP procedures and legislation. The experience of the consultancy was acknowledged by public and private sectors. Consequently, public and private actors also relied on the consultancy due to its perceived expertise, especially considering that in 2009 it contributed to the preparation of the first PPP project of the Ceara state government, the football stadium, and it prepared the state's PPP Manual with guidelines and procedures for PPP formulation.

During the first months of the PRI pre-tendering preparation of the city centre PPP, the group of private actors hired the consultancy as advisor, but it was also the informal advisor to the local administration in the process. The interviews with public actors also showed that they expected the consultancy to be committed to answering the demands of the public sector, even though it was hired by the private consortium. Public actors

assumed the consultancy would take into consideration their inputs because the local government would be the one responsible for approving or not the final studies for the city centre intervention. The PPP Unit Secretary expressed this perception in interview:

*Since we are talking about a PPP, we want to believe that the consulting company also thinks about the public sector, even though it is hired by the private sector; because they know that in the end we are the ones responsible for approving the studies.*

When local public and private actors that lacked know-how in PPPs decided to engage in a pre-tendering process of PPP formulation, they relied on the consultancy for guidelines due to its previous experience in PPPs. This helped to overcome initial insecurities and possible discouragement resulting from their lack of experience and know-how in the topic. The participation of the local consultancy was essential in the elaboration of the initial strategy for the formulation of the city centre PPP project. The definition of the strategic approach of the 'contextual institutional arrangement' is discussed next.

## **7.5 The instrumental strategic arrangement: the influence of the Ceara state's government approach**

In this Episode of the case study, the strategic approach of the 'systemic institutional arrangement' was similar to the instrumental strategy of the Brazil PPP Framework used in other PRI cases in Brazil (more details in Chapter 2). In the case study, the instrumental strategy was based on the rigid pre-definition of guidelines, activities budgets, timeframes and objectives for the formulation of a PPP project. It was initially influenced by Ceara state government's PRI publications and PPP Manual, which set procedures and best practices for the elaboration of PPP projects. In the case study, the guidelines from the state government influenced the local PRI publication and the PRI proposal prepared by the consultancy on behalf of private investors. The PRI publication of March 2011 had an embedded instrumental planning mentality since it was very similar to the PRIs used by the state government. Actors from the public sector perceived that the experience of the state government with the football stadium PPP was as successful example to be followed.

In the municipal PRI publication, the "*guidelines for submission of work plan*" were almost a copy of the same item in the state government's PRIs that requested private

parties to describe the technical approach, methodology and work plan for policy formulation. The instrumental planning tendency embedded in the guidelines for the work plan of the PRI is exemplified below with an extract from the document: “[the bidder] should propose the main activities of the services, content and duration, phases and relations between them, milestones (including interim approvals by the Executor of the public sector), and delivery dates of the reports” (Municipal Official Diary 14514, 2011, p.9). Based on the work plan guidelines above, the PRI publication requested private parties to propose a plan for the formulation. It assumed that the private initiative had all necessary information and knowledge about the city centre issues and was capable of presenting in 15 days a PRI proposal with a planned strategy for the formulation process, with objectives, activities, timetable and budget.

By the deadline only one PRI proposal was submitted, which was prepared by the local consultancy on behalf of the local group of investors interested in the city centre parking lot business. Private investors with limited PPP knowledge relied on the local consultancy for the PRI proposal. The consultancy had extensive experience in planning and preparing projects based on the concepts and scientific procedures of project management techniques. However, the PPP formulation of parking lots and PCCs was the first process in which the local consultancy would be entirely responsible for planning, coordination and document preparation. Due to its limited practical know-how, when hired for the PRI proposal, the consultancy relied on its experience with the elaboration of the Ceara state government’s PPP Manual and on its expertise in project management procedures. The instrumental planning mentality of the state government’s PPP Manual was transferred to the preparation of the city centre PPP through the influence of the consultancy. Therefore, for the PRI proposal, it was assumed that following the instrumental procedures of the state’s PPP Manual was adequate for the city centre PPP formulation.

The proposal suggested the same activities of the state’s PPP Manual, in which the private sector would discuss the details of scope for the preparation with the public sector, but mostly prepare the studies alone based on the instrumental plan, which would then be presented and submitted to the government for analysis, validation and approval. There were several other aspects of the PRI proposal that indicated the intention of adopting an instrumental strategy for the design of the city centre PPP. The proposal included clearly defined procedures and methodology for the definition of the objectives and for the elaboration of the instrumental plan to guide the project preparation process. The proposal

also described in detail each product that would be submitted at the end of the formulation period. The list of documents and elaboration guidelines was based on the Ceara state government's PPP Manual and divided in three areas: Project Guidelines, Feasibility Studies and Modelling Studies. It also established a timeframe allocating number of days for the elaboration of each document. It proposed a period of 150 days for detailing of scope and objectives, planning the project preparation and enacting the strategy to design it. Prior to any engagement, it was assumed that the timeframe was sufficient for the PPP formulation process.

The PRI proposal was submitted on April 8, 2011 for evaluation by the team of the City Centre Secretariat. Two departments from the City Centre Secretariat evaluated the proposal and issued official opinions that confirmed the legal and fiscal qualification of the private consortium. After approval of the PRI proposal, the City Centre Secretariat published a decree in June 2011 officially authorizing the group of private investors to design the city centre project based on the suggested instrumental approach. The decree adopted the same timeframe of the PRI proposal for the pre-tendering process, but with no justification or comments on its adequacy. The timeframe was set at 150 days and the submission deadline for the final PPP project documents was scheduled for November 11, 2011 (Decree n. 12826, 2011). The Municipal PPP Law was published in June 16 2011, one day after the publication of the decree authorizing the private consortium to start the formulation of the technical studies. But the introduction of a municipal legislation was not accompanied by a simultaneous adjustment in the local culture about PPP legal procedures and rules. Public and private actors were still learning about the topic.

When private investors were authorized to start working on the PPP formulation, the local consultancy took over the process and promoted training and seminars to level the knowledge of public, private and technical actors in PPP procedures. In early July 2011, it organized a kick off meeting which formally marked the beginning of the PPP formulation process, with the participation of consultancy, public and private actors expected to have some level of involvement throughout the process. There were also weekly meetings at the Municipal PPP Unit that worked as training sessions promoted by consultancy directors and coordinators, who perceived that public sector participants and consultancy technicians lacked knowledge in PPPs. These meetings were aimed at explaining in detail the state's PPP Manual and kick off meeting guidelines for the PPP project formulation.

## **7.6 Summary of Chapter**

In the case study, the stakeholders involved in the PRI pre-tendering arrangements lacked a clear framework for the process. In the early stages of their interactions, actors were able to construct the basis of 'systemic institutional arrangement' which was complemented in the next EPISODE of interactions. The summary of this chapter is organized in terms of the elements of the 'systemic institutional arrangement' produced through actors' interactions in EPISODE 1. The summary of each element focuses on the interplay between embedded and innovative 'ways of thinking and acting'.

### **7.6.1 Systemic Policy Arrangement**

In the case study, prior to engagement in Episode 1, there was no clear or prioritized sectoral scope for use of PPP instrument; PPPs were not even a priority in the public sector agenda. However, through their interactions, actors were able to construct the policy scope first by mobilizing contextual elements, conciliating interests and defining the PPP instrument as tool for project delivery. The conciliation of interests on a PCC and parking lot scope was influenced by the local social policy and political scenario, as well as by a favorable local business and urban mobility context. The selection of the PPP instrument came after the definition of the scope and was based on the overcoming of embedded biases related to traditional public-private relations and of lack of experience, and on perceptions that the instrument was appropriate for the situation at hand.

### **7.6.2 Systemic Legal Arrangement**

In Episode 1 actors were able to select the Procedure for Request of Interest (PRI) as appropriate mechanism for PPP design, which was influenced by the actors' embedded perceptions of difficulties imposed by the structure of federal resource distribution; bureaucratic procedures of the public administration; and by the culture of distrust between public and private sectors in traditional ways of project formulation. In the absence of a local PPP legislation to go forward with the process, actors were able to improvise a local legal PPP arrangement for the official publication of the PRI inviting private companies to express interest in elaborating the city centre PPP re-ordering project.

### **7.6.3 Systemic Organizational Arrangement**

In the case study of Fortaleza, there was a fragile PPP organizational framework prior to actors' engagement in the pre-tendering stage. There was no officially published PPP Decree creating Managing Council and PPP Units, no background and experience in PPPs and PRI arrangements, and public and private actors had limited PPP training and technical knowledge. An informally created PPP Unit was still learning about PPP formulation procedures. The fragility of the local PPP (legal, organizational and cultural) arrangement influenced the reliance of public and private actors on the perceived experience of a local consultancy for coordination and organization of the PPP formulation process. The consultancy also promoted trainings and seminars for levelling the knowledge of public, private and technical actors on standard procedures of PPP design.

### **7.6.4 Systemic Strategic Arrangement**

For the formulation of the city centre re-ordering PPP project, the municipality did not have a PRI decree; it also lacked manuals and guidelines or database of previous projects. In order to formulate a strategy, the local government relied on the consultancy's experience and on the state government's PRI publications and PPP Manual. Both had embedded instrumental procedures and best practice guidelines for the elaboration of PPP projects, which influenced the municipality in the elaboration of the PRI publication and the local consultancy in the PRI proposal, which it prepared on behalf of private investors.

## **7.7 Conclusion**

In EPISODE 1, actors constructed the initial basis of a 'systemic institutional arrangement'. Actors were able to agree on the urban mobility policy scope and select the PPP instrument for the intervention, even though they had no experience on the topic and the instrument had not been a priority in the local policy agenda. The arrangement had instrumental strategic elements, similar to the suggestions of the Brazil PPP Framework, discussed in Chapter 2. However, its legal and organizational elements were fragile and followed improvisations to make possible the use of the PPP for the city centre re-ordering policy. The next chapter analyses EPISODE 2 of the formulation process, when actors complemented the initial systemic arrangement and readjusted its elements in their interactions. However, their attempts were not sufficient for completion of the PRI pre-tendering stage in EPISODE 2. The following aspects characterize the systemic arrangement of the next EPISODE:

- Organizational arrangement: fragile role of municipal PPP organizations, transfer of coordination from public and private actors to the consultancy, difficulties faced by consultancy coordinators to guide the complex process of PPP formulation influenced by contextual factors and absence of internal control from PPP Unit or Managing Council;
- Legal framework: the local PPP Law was published (June, 2011), but there was a fragile local culture on PPP legislation (actors' had not internalized procedures for formulation of PPP projects), resulting in transfer of responsibility over legal concerns to a non-local specialized and experienced office in PPPs which did not actively and locally participate in the process to ensure legal accountability over decision-making processes;
- Strategic arrangement: problems to implement an instrumental strategy for a complex and contextual process of PPP formulation, dependent on the interactions between a large number of stakeholders; but also actor's initiative to overcome lack of guidance and coordination through development of soft capacity elements such as collaboration and flexible network for information-sharing;
- Policy framework: actors continued committed to the scope initially defined (PCCs and parking lots); however, under lack of strategy coordination and fragile organizational and legal frameworks to oversee decision-making, actors engaged in the definition of technical premises for the infrastructure project based on mobilizations for 'political consensus building' to prevent resistances to the project; this helped to keep them committed to the process, but influenced technical decisions that compromised project quality and legal accountability.

## **Chapter 8 - Descriptive-Analysis of EPISODE 2**

### **Actor-relations in the enactment and adjustment of the ‘systemic institutional arrangement’**

#### **8.1 Introduction**

According to the analysis of EPISODE 1, actors defined in their interactions the basis of a ‘systemic institutional arrangement’ for the case study process. In EPISODE 2, actors complemented the arrangement of the previous EPISODE by solidifying the instrumental strategy, but still working under fragile legal and organizational PPP guidance. As the analysis of EPISODE 2 will show, the ‘systemic institutional arrangement’ was enacted and readjusted during this EPISODE, but it was still insufficient to support actors’ engagement towards completion of the PRI pre-tendering stage. EPISODE 2 covers the period between the kick off meeting of July 2011 until the submission of the PPP project to the local government in November, 2011.

In EPISODE 2, actors’ engagement for the formulation of the city centre PPP disregarded the complex characteristics of PPP projects in Brazil, which are based on dynamic formal and informal interactions and on the embedded ‘project finance’ concept of network of interdependent actors. It also disregarded numerous particularities of the local context of Fortaleza for project formulation, including level of local actor’s coordination capacity, actors’ perception of a resistant local political culture, and its influence on the technical specifications for the PPP project design. They were also not able to manage the influence of the diversity of relevant local factors that emerged during the formulation stage (i.e. property and legislation issues). Although there were some positive aspects as actors managed to stay continuously motivated throughout the process and improved the strategic approach for the PPP formulation, the fragility of legal and organizational arrangements, the influence of context, flexible strategy and lack of coordination compromised the quality of the city centre PPP project. Thus, the local government rejected the project in the deadline of November, 2011. This chapter analyses EPISODE 2 in three stages:

1. Complementing the ‘systemic institutional arrangement’: actors’ attempted to move forward with the instrumental strategy, but faced problems to prepare a technically and legally coherent project due to inadequate organizational and legal frameworks, as well as to the complexity of formulating the PPP project;



2. The enactment and readjustment of the 'systemic institutional arrangement': actors mobilized to overcome difficulties of progressing with the project using aspects that kept actors committed – (i) an emergent strategy of initiative, collaboration and flexible network relations, but with not control or coordination; and (ii) actors' engagement in a process of 'political consensus building' to define technical premises in a way to prevent perceived resistances to the project;
3. The submission of the city centre PPP project design: a discussion of the problems that remained at the end of EPISODE 2 and circumstances that led to its rejection by the local government.

The last section is a summary of the main aspects of the analysis of this EPISODE, focusing on the embeddedness and innovation in 'ways of thinking and doing things'. The summary is organized around the elements of the 'systemic institutional arrangement': policy, legal, organizational and strategic arrangements.

## **8.2 Complementing the 'systemic institutional arrangement'**

Three elements of the 'systemic institutional arrangement' were constructed in EPISODE 2: the strategic framework, and the organizational and legal frameworks for strategy implementation. The scope of the city centre PPP project was the same as in EPISODE 1: the construction, operation and maintenance of Popular Commercial Centres and parking lots for the re-ordering of Fortaleza's city centre; but the premises of this scope were defined in the interactions during EPISODE 2.

### **8.2.1 Strategic Framework: elaboration of instrumental strategy**

The deliberate decision to use an instrumental approach for project formulation was embedded in the PRI publication of March 2011, which invited private companies to express interest in formulating the city centre policy. It was also embedded in the PRI proposal submitted on April 2011 by the private investors, but elaborated by the local consultancy. Public actors' evaluation of the PRI proposal, which did not assess its adequacy for the city centre context, also allowed actors to engage in the process under an instrumental strategy.

After the kick off meeting in July, 2011 that officially launched the PRI pre-tendering formulation process of the city centre PPP, actors engaged in the elaboration and implementation of the instrumental strategy. They initially produced a document entitled

Project Guidelines that detailed the instrumental strategic plan to guide the PPP formulation, which had to be completed by the official deadline set at November, 2011. The instrumental plan was produced in meetings at the unofficial PPP Unit, perceived as the coordinator body of the local government for the city centre PPP formulation. The meetings promoted interactive discussions between actors for detailing the project plan, based on the established guidelines and best practices available, such as the model of the state government's PPP Manual. Actors' attempted to learn from the evidence of other examples of PPP formulation to plan the strategic design of the city centre PPP intervention, but without considering its contextual specificities.

The elaboration of the instrumental plan involved public actors and consultancy technicians, but the participation of private investors was limited. Several actors from the consultancy and many other technicians hired for the production of the 'project finance' studies participated in the meetings for designing the instrumental plan, including architects, urban mobility and construction engineers, legal advisors, economists, etc. From the public sector, there was the City Attorney appointed for PPPs, legal specialists, architects, and other technicians from the City Centre Secretariat and PPP Unit. The City Centre Secretary, however, did not participate in any of the meetings. Consultancy directors and coordinators did not stimulate her participation and relied on the PPP Unit as the public sector coordinator. It was assumed that the PPP Unit would be able to articulate with other actors in the local administration and obtain necessary information for the scope definition and policy formulation planning. The PPP Unit team was dedicated in the meetings, but could not help with technical knowledge on the city centre for the scope clarification, as this was the responsibility of the City Centre Secretariat as the sectoral body responsible for the PPP.

During the PPP Unit meetings, actors had instrumental guidelines, but did not take into consideration that the elaboration of a PPP project was challenging and complex, based on many formal and informal interactions, on a large number of stakeholders and on the need to coherently connect and reconnect several feasibility studies, technical and legal documents prepared by a network of actors. Moreover, due to lack of awareness on the influence of context in the PPP formulation process, actors were unprepared to evaluate beforehand the adequacy of implementing, in a dynamic environment, an instrumental plan with pre-set activities, assumptions of stability and of complete information. The possibility of discussions over potentially more adequate strategic

approaches for the process was hampered by the instrumental planning perspective embedded in the meetings, in the PRI publication and proposal, in the guidelines obtained from the state government, as well as in actors' mentalities.

By August, 2011, actors had defined the instrumental plan for the process of PPP formulation and used instrumental techniques to validate objectives and detail activities and deadlines. One of these techniques was the S.M.A.R.T approach, used to define and assess the strategic objectives based on four criteria: if they were specific, measurable, attainable, relevant and timely. Actors also adopted a technique for risk assessment and to evaluate the feasibility of the objectives. They evaluated the risks based on the S.W.O.T Analysis, a technique used to access the project's strengths and weaknesses, but also opportunities and threats. Finally, they created an instrumental plan of action to be followed during the pre-tendering formulation stage. The results from the discussions at the PPP Unit meetings were included in the Project Guidelines document, which was used as the strategic plan for the PPP formulation. At this moment, there was clear separation between strategic design and implementation, and the execution of the strategy was expected to take place in the following months.

For the coordination of process of PPP design, actors expected to follow instrumental guidelines that set the details for the relations between the public sector, private investors and technical actors. Without prior considerations on the capacity of coordinators from the consultancy and from the public sector, it was assumed that the coordinators appointed for the job would be able to deliver the expected results and monitor the PPP formulation process by following the guidelines of the instrumental plan. The plan determined that the main interactions for the process would happen between public and private coordinators on a fortnight basis. It was assumed that the information would be easily accessed, transferred and available through the interactions between coordinators. Based on these guidelines, consultancy coordinators were placed in control over the process, while the local government and private actors trusted the consultancy capacity to manage it. As for the public sector, coordination was continuously assumed to be in the hands of the PPP Unit. For the implementation of the instrumental strategy, the role of coordination in EPISODE 2 is discussed in more detail in the next section.

### **8.2.2 Organizational Framework for strategy implementation: consultancy coordinators and detachment from public and private actors and consultancy directors**

A formal organizational arrangement for control and coordination of the PPP formulation at this stage did not exist in the case study. The municipality of Fortaleza had not officially created Managing Councils and PPP Units through the publication of a PPP Decree, and public sector entities had no clear information about their roles and responsibilities in the process. The PPP Decree formally creating these organizations was only officially published in December, 2011. As a result, the local organizational arrangement in the case study was fragile in terms of public actors' awareness of their roles and responsibilities in the process. On the other hand, in order to compensate for this fragility, it was assumed that the training promoted by the consultancy for the PPP Unit team, technicians and coordinators would create conditions for coordination and implementation of the instrumental plan. However, this section will show the absence of active coordination over the PPP formulation process. Public and private actors transferred coordination to the consultancy, which had difficulties to implement an instrumental plan for a complex project formulation.

The absence of active coordination was in contradiction with the attempt to implement an instrumental strategy. Instrumental strategic approaches require not only previous comprehensive planning with pre-set procedures, but it also requires top-down control, monitoring and coordination to assure enactment of the formulated plan (Hart, 1992). It is through these factors that instrumental plans are assumed to be able to impose control over actors' behaviour and over a presumed stable and predictable environment for the pursuit of the object of planning (Rosenhead, 1980). This is the assumption behind the Brazil PPP Framework, which adopts the idea that well established organizational frameworks and trained actors will have the capacity to coordinate the instrumental formulation of PPP projects, regardless of the complexity and context in which the process takes place. However, in the case study, coordination and control faced difficulties to guide the city centre PPP formulation based on the guidelines of the instrumental plan.

There were expectations that the instrumental plan elaborated during the PPP Unit meetings would be executed just as detailed. As a result, consultancy directors relied on the expectation that the appointed coordinators were capable of guiding the process. Consultancy directors also expected that Municipal PPP Unit would exercise the role of

coordinator from the public sector and articulate within the local administration to gather the necessary technical information, which did not happen. Although the PPP Unit had not been officially created by decree, its attempt to learn about PPPs and the trainings provided by consultancy placed the PPP Unit as coordinator in actors' perceptions. Nevertheless, no emphasis was put on the role of the City Centre Secretariat as the sectoral body in charge the municipal PPP project and with specific knowledge and information on the urban mobility scope of the city centre project.

Although there were perceptions of the PPP Unit as coordinator from the local government, public and private actors transferred leadership to the consultancy and also failed to actively coordinate the preparation process. They limited their involvement to validating main decisions and collaborating on an 'as needed basis'. In EPISODE 2, public and private actors perceived the consultancy to be in control of the preparation and expected that a well-defined scope and instrumental plan were in place to orient their engagement. The following quote illustrate the trust of private actors on the consultancy's capacity: *"Today I consider the background of the general director of the consultancy; also everybody else's, but especially him, because he's the mentor, the coordinator of the group of architects, engineers" (private investor 1).*

Public actors also expected the private consortium via the consultancy to take over the elaboration of PPP project documents, which would then be submitted for public sector evaluation. Although public and private trusted the consultancy's capacity mostly because of the experience of the directors, they did not exercise coordination and control, but transferred management over the process to trained consultancy coordinators. A quote by a technical actor confirms this specifically with respect to the general director: *"The general director had little time. As the only person in the consultancy who could give a more objective and effective orientation, he was away most of the time"* (technical director). Although consultancy directors had been formally indicated as key experts to be in charge of the PPP formulation, public actors did not check if directors were actually involved in the process. In practice, there was an overall detachment from consultancy directors, public actors (PPP Unit) and private investors as coordinators and leaders. The comment from an interviewee clarifies the lack of coordination from these groups during EPISODE 2 of the pre-tendering process:

*The public sector at a certain point was not interested in the process, the consultancy did not have the adequate team; and there was an alienated group of*

*investors, not knowing what was going on, because it was not in their area of expertise. Like this, the PPP will fatally not work (...). So it lacked experience in the group of the municipality, in our group, which was conducting the studies, and a complete alienation of private investors (consultancy technical director).*

Instead, consultancy coordinators were in charge of managing the city centre PPP formulation based on assumptions that the instrumental plan was sufficient to guide technical actors and control the environment. Consultancy directors also considered that the technical team appointed for preparing the documents of the PPP project would be able to elaborate them based on the instrumental strategy and previous trainings. Technicians' individual specializations, sectoral experiences and know-how were prioritized and coordinators were expected to integrate the material produced. It was assumed that coordinators would be able to control the timeframe, activities, objectives and budget specifications of the instrumental strategy. The guidelines from the state government's PPP Manual were given to individual technicians for preparing the Modeling and Feasibility Studies. However, technicians were working disconnected and independently even though the 'project finance' concept embedded in PPP projects require the integration and constant feedback between the networks of studies being produced. Meanwhile, coordinators did not monitor the document integration or technical and legal consistency of the decisions. They simply crossed the documents received from the checklist of the state government PPP Manual and stored for further submission. The following comment from a technical interviewee illustrates perception of problems with the elaboration of the PPP technical studies:

*There was a ball of activities, of actions not connected to anything, not sequential and without any logic. So in the middle of this ball, while in the consultancy nobody knew anything (...). I even went to some meetings, and I was completely shocked because the leader was coordinating in the place of the general director of the consultancy. He would present some nonsense spreadsheets. I remember that there was in a risk spreadsheet the 'risk of brick shortage' and 'risk of cement shortage'. Anything you could think of risk, you had to say it. Nobody at the consultancy knew about this PPP, the only one with experience was the general director. So this is the way we did it, when we had to do the PPP study (social specialist).*

This section showed difficulties with the organizational arrangement for the formulation of the PPP project. The transfer of coordination from private and public actors

to the consultancy was an attempt to compensate for the fragile formal PPP organizational culture. Local rules and procedures were in place as the local PPP Law had already been published (June, 2011); however, actors lacked awareness of their roles and responsibilities in the process. As next section will show, a similar approach was adopted with respect to the legal arrangement. Since public and private actors were still learning about PPPs, during the pre-tendering process they relied on the expertise of a legal advising office with experience in PPPs. The office headquarters was based in the city of Sao Paulo in the Southeast of Brazil, but it was hired by private investors as the main legal advisor for the formulation of the Fortaleza city centre urban mobility PPP. Although this alternative for the systemic legal framework did not derail the process, the existence of PPP rules and procedures were also not sufficient, as actors had not internalized the importance of considering them in practice.

### **8.2.3 The Legal Framework for strategy implementation: Sao Paulo legal office**

In EPISODE 2, actors engaged in the PPP formulation process with limited knowledge on PPPs and based on a recently implemented PPP legislation (June, 2011). As a result, they relied on the expertise of a legal office from Sao Paulo which had extensive national experience in PPP preparations. It was hired by private investors based on the indication of consultancy directors and became the main legal orientation guiding the city centre PPP formulation. The involvement of a legal office influenced consultancy directors' perception that the team hired would be able to deliver legally consistent PPP documents. The following comment by a consultancy director demonstrates the confidence placed on the expertise of the legal office for the city centre PPP formulation:

*The legal office was our partner in the project of the state government's PPP Manual. We are working together in other projects, so their indication was natural. There is another thing; this legal office has experience and is preparing the PPP parking lot policy for the city centre of Sao Paulo (consultancy general director).*

Since the municipality of Fortaleza did not have PPP legislation and public and private actors were not familiar with PPP rules and procedures, the involvement of the legal office was an attempt to compensate this fragility due to its experience in PPP and PRI procedures. However, the members of the Sao Paulo office only sporadically travelled to Fortaleza for meetings. Most of their work was carried out independently, except for eventual meetings or Skype conversations with the consultancy team in Fortaleza. A local

lawyer was hired by the consultancy to help in the interlocution with the Sao Paulo office, but their exchange of information was limited. Moreover, still in the early stages of EPISODE 2, the lawyer was no longer a member of the consultancy team, and the Sao Paulo office was handling alone and from a distance all legal aspects related to the preparation of the project.

The mobilization of the technical team and the expectations that coordinators would act as integrators also influenced directors' security on the preparation of a technically and legally consistent project. However, as it will be demonstrated later, the absence of a clear PPP legislation, the cultural fragility on PPP procedures and this improvisation in the legal arrangement influenced inconsistencies in the PPP technical documents.

#### **8.2.4 Summary of section and concluding thoughts**

The legal and organizational arrangements for the city centre PPP formulation were respectively formed by the Sao Paulo legal office and coordinators in charge of a technical team. The strategic arrangement was based on an instrumental plan with pre-set goals, technical procedures, methodologies, guidelines, sequential plan and fixed timeframe. Public, private and consultancy actors had confidence in the guidelines and in the instrumental plan and thought the technical team hired would be able to follow its guidelines. They also relied in the appointed coordinators to guide the process, as well as in the office from Sao Paulo for legal instructions. Consultancy directors trusted the capacity of the Municipal PPP Unit to act as coordinator from the public sector, but did not take into account its limited experience and the fact that the PPP Unit was in fact relying on the consultancy for coordination. The following quote by one of the directors illustrates the perception that the process was under control: *I think that before starting the studies we were able to map well all the issues we needed to study, everything we needed to gather (consultancy technical director).*

However, the strategic, legal and organizational elements in the 'systemic institutional arrangement' were not adequate to orient the city centre PPP formulation in the PRI pre-tendering stage. As next section will show, the problems in the application of the instrumental strategy led to a readjustment. When actors faced coordination difficulties, especially considering the dynamics of formal and informal interactions and a network of interdependent actors which characterize the process, they changed the



strategic approach for the PPP formulation. The fragility of the legal and organizational arrangements, on the other hand, remained throughout EPISODE 2.

### **8.3 Enactment and readjustment of ‘systemic institutional arrangement’**

The ‘systemic institutional arrangement’ initially produced had problems, so it was reformulated during EPISODE 2. There were instrumental plans, procedures, methodologies that actors had difficulties to follow, lack of technical leadership, difficulties in integrating the technical team, difficulties in obtaining specific city centre information, unclear scope for technical studies and underestimation of the complexity of formulating a PPP project. However, these were not significant enough to cause the complete disruption of the PRI pre-tendering process, especially because actors were able to reformulate the approach through their interactions for project formulation.

Based on the new approach, actors were able to overcome initial frustrations of slow progress and draw motivational elements that kept them committed to the informal PRI pre-tendering process despite no legally binding contract. The new framework was based on two aspects that influenced actors’ interactions in parallel. One aspect involved technical actors’ initiative and collaboration, as well as different groups of interaction working in parallel to determine project specifications and to accelerate the preparation of products for submission. The other aspect was the significant influence of the contextual political culture on actors’ interaction. This was reflected in a process of ‘political consensus building’, aimed at overcoming public and private actors’ embedded insecurities and at preventing perceived political, cultural and judicial obstacles and resistances from interfering with the process. Before discussing the influence of ‘political consensus building’, the new strategy adopted is discussed next. It is important to highlight that these two sections are separated for analytical purposes only, but in practice they happened simultaneously.

### **8.3.1 Initiative, collaboration and flexible network relations in an emergent strategy**

In face of the inadequacy of the instrumental strategy, of coordination problems and detachment from public and private actors and consultancy senior directors, actors became frustrated with the initial difficulties and delays in the progress, but managed to adopt a new approach for the formulation of the city centre PPP. Since the instrumental plan was not a useful guide, actors were able to define the assumptions and premises of the project through another approach, based on different groups of interactions working in parallel. The new approach used in EPISODE 2 was unplanned and dependent on the interactions among the actors involved in the process. It resembled an emergent strategy in which interactions were dependent upon the autonomous and adaptive behavior of actors without top management coordination and leadership (Hart, 1992). In this scenario, actors acted as institutional entrepreneurs triggered by the inability of the instrumental plan to guide them in the process and motivated by their willingness to continue.

As actors engaged in the technical preparation process, they faced difficulties to elaborate the documents based on the instrumental plan, which did not provide guidelines for the complex formulation of a project. Based on the initial guidelines from coordinators, technicians were set off to prepare the documents in isolation, but they had limited information, experience, time and network access to prepare the technical studies alone. It was a shared comment in the interviews that technical actors lacked experience and know-how for the preparation; however, the problem was also in the inadequacy of the instrumental plan for the type of project and complexity involved. The initial difficulties and delay in progress resulted in insecurity and frustration which did not derail the pre-tendering process, but actually enabled collective institutional entrepreneurship for the mobilization of a new approach for the PPP formulation.

In EPISODE 2, actors did not acknowledge that there were problems with the strategic, organizational and legal frameworks constructed for the city centre PPP formulation, and blamed the consultancy and its coordinators for not being able to apply the instrumental strategy. They developed frustrated expectations with respect to their initial trust on the consultancy and on perceptions that the process would be easily implemented under the instrumental strategy. Public actors showed lack of capacity to evaluate the appropriateness of the instrumental approach for the PPP formulation context in which they engaged. The following comment by a local government interviewee

demonstrates a perception that the process was loose and uncoordinated, reflecting frustrations with the application of the instrumental plan, but not questioning the strategic approach:

*I thought that if I sell you a service, for example, a lawyer, and if you come to me and say, 'I want to get a divorce'; then I already have the model. I will insert your information and your situation, but I'd already have the model. I would have a framework if I do this for more than 20 years, in which I would insert your specificities. In reality, I didn't see this happening, not even for a moment. I saw things in certain moments and I would say to myself 'my God, I hope that I'm not understanding anything', because I thought the thing was kind of lost. And then there were discussions about the deadline not working. I started to feel scared (City Centre Secretariat legal specialist).*

Public actors had expectations that the implementation of an instrumental plan was appropriate and simple. They were not aware of the difficulties of implementing such a plan in a scenario of complexity. They became frustrated when the plan did not match the expectations, as illustrated by the following quote from an interviewee from the public sector:

*I had another expectation that everything would happen within what was determined in the PRI publication, within that deadline, in that timeframe. (...) I was anguished because there was no closure of the entire thing. I was seeing the thing completely open and concerned that all would be lost. (...) I was very afraid that this would die in the middle of the way due to a lack of a larger consistency, due to lack of a stronger technical posture (City Centre Secretariat architect).*

Nevertheless, the process was not completely derailed by frustrations, absence of an adequate plan, lack of knowledge about real situation in which they were embedded, as well as lack of coordination with expertise in complex PPP preparations. In the case study, through their interactions actors adjusted the strategy in response to problems.

They had clear interests to find a way to formulate the PPP within the deadline of November 2011, which kept them committed and collaborative despite constant frustrations and developed initiative capacity in some actors. Technical actors took the initiative to obtain the information they needed to prepare the PPP documents. Although there was no overall coordinator, some technical actors had the initiative to contact the

City Centre Secretariat (Sectoral Secretariat) to obtain more details on the city centre scope. Public sector actors were contacted on the 'as-needed' basis, and were collaborative in the process. There were also important interactions between private investors and the technical team, as well as between investors and the Sectoral Secretariat for definition of financial aspects. Actors' participation and perception of ownership over the process kept them constantly motivated and committed.

Even though consultancy directors did not see that the City Centre Secretary and her team contributed to the technical preparation, their participation was essential for defining important criteria for the studies, and for private actors' perception of ongoing political commitment from the public sector. According to consultancy directors in interview, the Sectoral Secretary adopted the position of observer in EPISODE 2 for the elaboration of the technical studies. However, members of the technical team mentioned that she was helpful when asked for city centre information. Despite this divergence in perceptions, from investors' perspective the Sectoral Secretary transmitted confidence from her political commitment to the city centre PPP formulation.

The interviews reveal that the interactions between the City Centre Secretary and her Sectoral team, private investors and technicians were essential for the definition of premises for the studies. However, in EPISODE 2, neither the City Centre Secretary nor private and consultancy actors embodied the role of coordinator over the new emergent strategy for the PPP formulation. It was in a scenario of lack of coordination that actors defined the properties for the construction of commercial centres and parking lots and the technical inputs for the definition of facility specifications. The definition of these premises in EPISODE 2 was also influenced by embedded perceptions of judicial, political and cultural obstacles against the PPP project. As a result, actors engaged in a process of 'political consensus building' to prevent resistances that influenced their commitment to the process and the technical decisions for the city centre PPP project. Based on this mobilization, actors developed a collective intention to overcome insecurities which kept them motivated despite initial frustrations with the progress of the pre-tendering stage. This process of 'political consensus building' is analysed next in three approaches:

- 'Political Consensus Building' in the selection of properties;
- 'Political Consensus Building' in PCC and parking lot facility specifications;
- 'Political Consensus Building' in communication.

### **8.3.2 'Political Consensus Building' in the selection of properties: preventing judicial obstacles and resistance from street vendors**

The selection of properties for the city centre intervention was influenced by intentions to facilitate the process of compulsory purchase. In Brazil, compulsory purchase is an administrative procedure allowed by the 1988 Federal Constitution in which expropriation of property by the public sector is permitted for public necessity or for social interest with previous pecuniary compensation to the property owner (article 24, Brazilian Federal Constitution, 1988). In the case study of Fortaleza city centre, public and private actors were aware that the acquisition of those properties was needed for the approval of the policy design for Public Consultation and especially for its official tendering publication. Therefore, actors used criteria for selecting property locations so as to prevent constraints, legal delays and resistances from property owners, street vendors and the judicial system. This decision, however, compromised the quality of the demand studies which were supposed to provide consistent technical justifications for property selection.

Actors understood the possibility of difficulties for the acquisition of properties and perceived, for example, possible resistance from the mayor to allow compulsory purchases. The following quote shows this perception: *"Our mayor here, in my opinion, has a big obstacle with compulsory purchase of property. For her to acquire property this way, she thinks 200 times before doing it"* (private investor 6). Actors were also insecure that the judicial system could block the acquisition due to pressures from property owners. However, interviews show that actors overcame insecurities because they trusted the embedded knowledge that the authority of the government would be sufficient to deal with obstacles to access to property. The following comment by a private interviewee demonstrates this: *"Look, there is one thing I've seen and learnt from, I've faced compulsory purchase before and when the public sector wants, get out of the way. Those who can, give orders; and those who are prudent, obey these orders"* (private investor 1). Another comment supports this perspective:

*There are underused properties, but the owner is looking at a future opportunity. He's not going to want to give it up very easily. But if the public sector wants the property, there is no way. If the property is determined of public use, the public sector can buy it through compulsory purchase and that's it (urban mobility specialist).*

Another way that actors used to overcome insecurities of resistance and obstacles to access to property was to select areas based on their empty, underused or derelict status. This was determined by the public sector, through the City Centre Secretariat. Investors agreed with this perspective and contributed with the selection of properties. The main premise was aimed at demonstrating that the city centre PPP would provide better use to derelict or empty properties, in case of resistance from judicial system in favour of property owners. From actors' perceptions, if the properties were empty or underused, it would be easier to argue that their selection was in the '*public interest*'. This understanding of actors throughout the process reflected a shared belief in the bureaucracies of the judicial system as a possible obstacle to the acquisition of properties. The following interview comment demonstrates this perception held by the private investors involved:

*There is the possibility of the judicial system getting involved, because the person who will be bothered will not cross the arms. He will try to do something. The [compulsory purchase] process takes some time so we need to have several options (private investor 4).*

A technician was initially hired to estimate the demand and study the feasibility of appropriate locations in the city centre that could create the condition for the policy intervention to meet the estimated demand. He took the initiative to contact the City Centre Secretariat in order to obtain information about possible locations for the policy implementation. From a list of 15 empty or underused properties provided, private investors and consultancy technicians selected properties for the construction of PCCs and parking lots. Private investors trusted their own knowledge of the property ownership situation in the city centre so as to select properties that would be more easily negotiated with their owners. In this way, they considered that their participation in indicating properties for the policy implementation was useful for the process:

*I have often met with the Secretary and discussed with her. Some properties I've indicated for her to visit. One day, a partner from the consortium and I walked around the city centre on a Saturday and analysed areas that could be part of this intervention, to construct the PCCs with parking lots. We've seen and indicated, the municipal authority indicated as well (private investor 2).*

Actors initially understood it was necessary to elaborate a demand study to justify the selection of properties for construction of PCCs and parking lots, but it was a political

approach instead that influenced the decision-making on this. During pre-tendering interactions, the technician responsible for the demand study received the pre-defined list and used information from a previous demand study obtained from the City Centre Secretariat to estimate the number of parking spaces and boxes to be provided through the city centre PPP intervention.

Consequently, the political understandings that empty or underused property could facilitate the process of compulsory purchase had a heavier weight over the necessity of a demand study to technically indicate and justify the feasibility of the selected properties. Actors' political perceptions on premises compromised the technical consistency of the demand study, and there was no active internal or external control body or coordination to point this out during the process. Interviewees acknowledged the political influence on technical decisions, such as the following comment by private investor: *"So to learn how to deal with the public sector is to understand that things must be done based on technical aspects, but the political aspects cannot be forgotten (private investor 5)*. Another interview comment demonstrates that private actors knew that properties were being selected so as to reduce resistance from property owners: *"There was this political composition, and we understand that this is natural. I mean, the property owner will have pressure influence, and that is hard to go against" (private investor 6)*. The following comment also illustrates that, although actors understood that a technical procedure could be adopted for property selection, the approach used in the city centre preparation process was based on contextual knowledge about property derelict status:

*The one responsible for determining the parameters is the government, and it wants the private initiative to construct the idea. So it provides the location where the parking lots can be constructed, as well as the PCCs. The private sector will validate those locations and based on a demand study, it will say whether the location is feasible or not (...) But for the city centre [PPP project], everything was done considering empty or underused property. The City Centre Secretary tried to make it that way. I'm sure that based on a technical study these properties would not necessarily be the best locations (private investor 5).*

Another aspect that influenced the selection of property location was the policy commitment of the local government to maintain street vendors in the central area. This was aimed at preventing resistance from unsatisfied street vendors or from elected officials representing them in the local government. According to the interviews, it was generally

understood that staying in the central area was a demand of street vendors. Therefore, public and private actors decided to select areas in the city centre of Fortaleza, instead of simply removing vendors to any other distant neighbourhood in Fortaleza.

After political decisions for the selection of property locations which compromised the technical justification of a demand study, another issue was left with respect to making the properties available for the city centre project. A legal requirement for the acquisition of the properties selected was the publication of a decree of compulsory purchase by the local government. This would have to be authorized and formally signed by the mayor. This is a requirement of the Brazilian regulatory framework, which demonstrates that the specificities of the city centre PPP were embedded in a wider regulatory context relevant for the case (Decree-Law n. 3365, 1941). The publication of the compulsory purchase decrees was essential to validate the city centre PPP project design for its official authorization for Public Consultation and completion of the PRI pre-tendering stage. Nevertheless, actors continued to rely on political and informal processes of decision-making, which became important systemic rules, and managed to reach the completion of the pre-tendering process by waving compliance to this legal requirement. This non-compliance problem was not addressed throughout the rest of the pre-tendering stage, especially considering the lack of internal control by participants and organizations – such as the PPP Unit and Managing Council – who were not active as coordinators to ensure compliance with requirements of legal accountability. Moreover, their roles were undermined as internal controllers to oversee accountability issues, an aspect which becomes more evident in the next Chapter (especially section 9.6), when actors adopt informal routes of interactions to overcome bureaucratic public administrative procedures for authorization of project publication for Public Consultation.

The following section discusses another criteria defined in actors' interactions based on perceptions of resistances in the local context. The discussions occurred directly between the Secretary and consultancy technicians responsible for designing the physical facility structure of PCCs and parking lots. Investors also participated in those discussions and contributed with opinions. Despite lack of coordination to monitor the emergent strategy for the PPP formulation, actors were motivated with the discussions and continued to define premises for the city centre PPP project.



### **8.3.3 'Political Consensus Building' in PCC and parking lot facility specifications: preventing resistance from street vendors and public sector**

#### *Accounting for street vendors' demands on PCC building specifications*

The City Centre Secretary presented another requirement of street vendors to prevent resistances. Based on previous demands collected from street vendors, the local government acknowledged their preference for staying on the ground floor in a PCC to facilitate circulation of consumers. This was also a result of complaints with respect to the Central of Small Businesses, constructed in the format of a shopping centre. According to the interviews, actors acknowledged that there was the possibility of resistance if the demands of street vendors were not taken into consideration, especially due to the fact that the municipal authority had failed with the previous attempt to implement a commercial centre.

By accounting for the ground floor requirement, private investors suggested the idea of galleries, in which the PCC would be constructed on the ground floor in a transversal approach, crossing a block and linking two parallel streets. This approach was expected to stimulate the circulation of pedestrians across the PCC, preventing any box of vendors from being at disadvantage.

Therefore, besides selecting properties located in the central area to answer to street vendors' demands, actors also adopted, as PCC building specification, the demand of street vendors to stay on the ground floor, represented by the idea of galleries. The consideration of street vendors' demands was perceived as an instrument of political consensus building. The following interview quote by the consultancy technical director demonstrates the expectations of including their demands in the project: *"I can tell you that the urban and architectural solutions, and of mobility and accessibility, included the demands of street vendors. From that we understand that we will minimize their resistances against buying this idea"*.

#### *Ignoring construction parameter limits imposed by the local urban legislation*

Another premise definition that involved political considerations was actors' decision to ignore the limitations imposed on facility construction parameters by the local urban legislation in order to reduce the financial costs and fiscal burden of the project. This was aimed at demonstrating to society and to control bodies that the PPP design was an

appropriate alternative to re-organize the city centre without representing a burden on the municipal budget, but also at securing a profitable business intervention for the private sector.

Based on the format of the city centre PPP accorded by public and private actors, the private sector would be responsible for paying for the construction of commercial centre and parking lot facilities, as well as for up-front costs with compulsory purchase. The local government would then reimburse part of these costs during the contract execution term, while the rest of the private remuneration would come from tariffs and rent charged to parking and PCC users. In order to reduce the financial costs of PPP project and increase its profitability, without increasing the fiscal burden on the municipality, private investors and technicians tried to find alternatives to reduce the construction costs of the project. The solution adopted was to ignore the construction limits imposed by the local urban legislation, the Municipal Master Plan (Law n. 062, 2009). The initial design for PCCs and parking lots involved many above and underground floors, which were very costly to implement, especially considering difficulties involved in the construction of underground floors. Therefore, private investors and technicians decided to ignore the building parameter limits of the urban legislation, which were set at 60% for ground and above ground, and 70% for underground. They opted instead for 80% for each level in order to gain additional floor area and to construct more units per floor, reducing the number of above and underground levels per facility, and substantially decreasing construction costs.

The decision of investors and consultancy technicians to ignore the limits of the local urban legislation was influenced by knowledge of the local context. They knew that there were discussions in the local government against the existing urban construction parameters. They learned that these parameters had already been questioned by the public and private sectors prior to the city centre PPP. The justification was that many buildings in the central area had been constructed based on parameters of 100%, and the lower limits of the urban legislation turned most existing buildings irregular. Moreover, considering the small size of property areas in the city centre, the lower parameters of the urban legislation froze new constructions, as well as most attempts at refurbishment and renovation of older buildings. In view of these observations, consultancy technicians and investors also found out that local elected officials had already been pressured to alter the parameters in the Municipal Master Plan (Law n. 062, 2009). All of these aspects built

expectations on the actors involved in the process that it was possible to disregard the limitations of the urban legislation.

On the other hand, actors did not consider that if there was not an actual change in the Municipal Plan approving the 80% parameters they had adopted in the studies, the city centre PPP project design could be prevented from reaching Public Consultation and the official tendering stage, especially by federal, state and municipal control bodies. Accountability issues were a concern of some public sector interviewees, but not taken seriously in the technical studies. The following comment illustrates concern with accountability:

*“We try to minimize the number of steps so that in the end everything is agreed upon (...). We have as much interest as the private sector, so we must fight for that. We must do everything right to avoid doing things politically wrong, because the Public Ministry can get involved; so everything must be legally right” (PPP Unit Secretary).*

However, due to lack of control, coordination and integration in the decisions, the concerns of some public actors were not considered in the selection of the parameter for the PPP design. As a result, all of the technical studies were based on the legally inconsistent construction parameter of 80%.

At this stage of the process, there was substantial exchange of information between the public and private sectors; but validation and control of decisions for technical and legal consistency of the PPP project was limited. There were no actors in the consultancy or public and private sectors to evaluate the integration and overall coherence of the decisions from a comprehensive perspective (the project design as ‘whole’). Consequently, despite some concern with accountability and despite the fact that actors wanted to prevent resistances during and for the Public Consultation, investors and consultancy technicians ignored the construction parameter limitations of the urban legislation for the physical design of PCCs and parking lots.

#### **8.3.4 ‘Political Consensus Building’ in communication**

Another political mobilization that kept actors committed to the pre-tendering stage was their involvement in communication strategies. In the interviews, actors expressed that the PPP was a new theme in the municipal context, which could result in

cultural and political obstacles for the approval and publication of a city centre project based on the PPP instrument. Therefore, they highlighted the importance of constructing political will for their progress towards Public Consultation. In interviews, it became clear the collective vision to prevent obstacles for the process. As an investor mentioned, they perceived that '*strong political ingredients*' were essential mobilizing forces in the preparation process. The following comment illustrates the perception that the local context in which the process was embedded influenced the complexity of formulating the PPP project:

*It is a whole that requires a lot, especially considering an unknown subject such as PPPs. It is not just a simple 8666 tendering process; it is a PPP that involves a high amount of investment; compulsory purchases that create problems because property owners will fight, they won't just accept it. So there are several things that happen that depend on the whole working together. It is also necessary a social assistant to persuade the street vendors that the project is the best solution for them. It is also necessary a communication group so that the information will reach the media correctly, not distorting the project in the wrong way. In my opinion, this whole was crucial for the progress (private investor 2).*

As the previous comment illustrates, a constant in the interviews with public and private actors was the concern with cultural resistance in the local context due to the novelty of the PPP instrument. This can also be illustrated by the following quote with respect to a general perception of PPPs in Brazil:

*Everything is too new. There are huge cultural obstacles that need to be overcome. Brazil is still very immature in this type of experience. If the federal government, which has a law dating back to 2004, is still maturing, I won't even mention the municipalities" (City Centre Secretary).*

Interviewees from the local government commented on the need to engage in a process of persuasion not only to convince public actors and avoid reluctance, but also to explain the PPP instrument to improve the quality of discussions in the public sector especially with control bodies. Comments from interviewees show perceptions of obstacles for the process related to the lack of understanding of PPPs in the core of the public sector, as well as the common confusion between PPPs and privatization, as illustrated ahead:

*Our local businessmen, our politicians know very little. (...)The lack of knowledge is substantial. There is a lot of confusion between PPP and privatization. Almost 100% of the times when you mention PPP, they confuse with privatization; in both sectors, both politicians and business people. (...) So we notice that a huge debate is missing on the theme in the intellectual arena of the city, among opinion-makers, journalists, writers, in the economic arena, in the universities. I notice the debate is very poor” (consultancy technical director).*

Therefore, considering possibilities of resistance not only from actors in the local government but also from the media and society, selling the PPP idea and building political will in favour of the city centre PPP became a major focus of public and private actors during the period allocated to project design. However, the mobilization in response to this collective intention reduced the focus on formulating a PPP project that met legal requirements of fiscal and financial accountability and on monitoring its overall technical quality and coherence. Instead, preventing obstacles to overcome insecurities related to perceptions of resistance kept actors committed to the preparation despite lack of coordination and planning guidance. Therefore, the emergent politically-oriented strategy resulting from this process of engagement resulted in a technically deficient and legally inconsistent city centre PPP project.

As the interviews show, actors deliberately engaged in the process of political consensus building to develop a general understanding of the expected benefits of the PPP in order to reduce political risks for the Public Consultation. Actors understood that society and politicians could resist the city centre PPP initiative, especially considering that 2012 was an electoral year. In a interview, a private actor mentioned his perspective: *“You need the whole, because it involves the City Hall, the mayor and the secretaries; and the technicians underneath must be convinced as well, otherwise this can turn into a problem” (private investor 2)*. For public and private actors, the *“political moment”* could complicate the first municipal attempt to formulate a PPP policy. As the next quote from a private interviewee illustrates, actors were trying to prevent a *“wave against the project”*:

*If the Public Consultation happens without this having been prepared, in my opinion, the opportunity will be lost, and this wave will come. So this preparation part before the Public Consultation is to make people understand the initiative, and prevent people who speak loudly from persuading that it doesn't work (...). It will be that commotion, and in electoral year, the echo is extended, it reaches the podium.*

*Electoral year is potentially dangerous for any action of this nature, in my opinion, because it involves too much podium and persuasion, and the mayor does not want to lose points (private investor 6).*

Therefore, to build political will in favour of the city centre PPP, a local company was hired as communication advisor, and the political consensus activities lasted from October until December 2011. The local company had experience in mass communication for businesses and was hired to help public and private actors inform society of their involvement in the city centre PPP formulation process. When actors perceived several interests which could create obstacles for the city centre PPP formulation, they were acknowledging the complexity of interests involved in the city centre PPP intervention. Their strategy in face of this perception was to hire a communication advisor to help prevent obstacles from interfering with the process. The communication strategy for consensus building was not an attempt to obtain inputs from various stakeholders to the city centre policy scope; it was aimed at constructing a shared opinion in favour of the PPP so as to reduce the insecurities of the actors involved in formulating the project.

In October, 2011, the communication advising company started its activities. There were several meetings between the technical team of the consultancy, the City Centre Secretariat team and the advising company, in which the details of the intervention and of the PPP instrument were explained. After the first meetings with the communication team, it was emphasized the need to “*maximize the positive effects of the intervention*” (RM) and to engage in a discourse construction strategy, based on which actors learned a new discourse to apply when communicating the PPP project to targeted audiences. In interview, the City Centre Secretary explained this strategy of ‘political consensus building’:

*This is a polemic topic. I had several discussions with the communication advisor, asking for guidelines and discourse tips on how to present this, on what’s important to say to city councillors, to the press, to my team, to street vendors. There are several actors with whom you need to communicate so that they can communicate among themselves and accept the project. (...) Even if the project is economically and financially feasible, without communication it cannot go forward. Communication is the key.*

Based on actors’ interactions and agreements, a communication plan was prepared, determining several actions to be implemented prior to Public Consultation. As one of the

activities, the communication team organized a workshop for discourse construction with private investors and consultancy actors. Another activity was a meeting with members of a city centre business association, in which the perceived benefits of the PPP intervention in the central area were communicated first-hand in order to obtain their approval and support. Public, private and consultancy actors also organized meetings with the two most influential communication groups in the state of Ceara operating in television, newspapers, internet and radio. After the implementation of the communication strategy to deal with perceived political culture obstacles, they regarded it as successful considering publications in the local media:

*Because of this [communication strategy], when the first news were published regarding the PPP in the city centre, people had more knowledge about it, there was little reaction, they were more positive. The communication agency started to follow everything that was happening in the media, and most of the news articles, maybe 95%, were positive, only a few criticisms (consultancy technical director).*

### **8.3.5 Summary of section**

This section showed that the emergent strategy from actor-relations based on initiative and collaboration was not influenced by a shared objective to formulate a consistent city centre PPP project. The following aspects characterize the emergent strategy:

- It was influenced by a collective intention to prevent political, judicial and cultural obstacles against the project and its publication in Public Consultation;
- It helped actors to define technical specifications for the project, which had not been clearly done under the instrumental plan, but it was based on political, non-integrated and legally incoherent decisions as an attempt to prevent perceived obstacles;
- Actors became absorbed in the communication strategy for 'political consensus building' in the local context, while the studies being prepared lacked integration and legal consistency;
- There was no overall coordinator or internal controller to oversee problems which were carried forward.

Therefore, the nature of the emergent strategy without control and coordination and influenced by perceptions of contextual political and cultural obstacles compromised

the quality of the city centre PPP project submitted to the local government in November 2011. For definition of project premises, actors applied embedded political decision-making practices which influenced their interest and commitment to the process. On one hand, this approach allowed the selection of property locations and actors' technical specifications for PCC and parking lot facilities; but, on the other, it highlighted the role of politics overtaking the importance of technical consistency or justification for decisions, as well as the absence of internal and external control and concern for accountability issues. In this case, a balance between these aspects was not achieved.

In EPISODE 2, actors seemed more concerned with making political decisions and building political consensus to facilitate the implementation and finish the pre-tendering stage than with building technical consistency in the documents. Some important technical aspects were not taken into considerations creating problems for EPISODE 3, such as ignoring legal requirements for compulsory purchase of property and legal construction constraints that would impose problems in the long-run. Other problems included the use of a demand study to justify a political selection of properties, as well as absence of an assessment of project risks during the formulation process. The impact of all these problems will be discussed in more detail in EPISODE 3.

#### **8.4 Submission of city centre PPP project design and rejection by the local government**

The process of 'political consensus building' for technical specification obscured the need to evaluate the quality of the material and created the shared image that the process was on track. However, there was no active coordination to identify that the intense focus on political consensus building and prevention of obstacles were detracting attention from monitoring the integration and coherence of the decisions being made. Actors' failed to recognize the internal factors that were creating the environment for the process of formulation. The documents were submitted by the deadline of November 11, 2011, and in the interview near the submission date, consultancy directors who were not controlling or coordinating the process explained that it was under control and that the studies had been successfully finalized: *"In November the PRI authorization period finishes. Today, all the studies are ready"* (consultancy general director). Another director shared a similar perception on November 4, 2011: *"You asked me if there was anything we did not*



*think of and that surprised us, in a positive or negative way. I'd say that we've been on top of everything that has happened" (consultancy technical director).*

There was also no consideration that the 'whole' being produced through arbitrary decisions were constructing a technically and legally incoherent PPP project for Public Consultation. Towards the end of EPISODE 2, consultancy actors decided to combine the independently produced documents for submission, without checking their integration or quality. This revealed that there was a greater focus on finalizing the products for submission than on guaranteeing their quality for approval or assessing whether the PPP was the most appropriate instrument for the policy intervention. In fact, the 'value for money' document, which was supposed to assess the cost-effectiveness of the PPP in comparison to other policy tools available, was not prepared, submitted or requested.

In the November 11 deadline, the documents submitted were rejected by the local government based on the official justification that it was inconsistent with the local legislation. Public sector actors only evaluated the details of the documents after submission because they did not coordinate the formulation of the PPP project throughout EPISODE 2 and did not assess the legal and technical quality of the material while it was being elaborated. In interview, the City Centre Secretary, who was the public official in charge of evaluating the PPP studies, mentioned the reason for rejecting them: *"First of all because they did not meet our expectations; we asked for more depth in a few aspects, such as the legal aspect"*. As the legal advisor of the Secretariat pointed out in interview, the legal study in particular was *'an aberration'*. She mentioned the study did not account for the specificities of the local urban legislation, demonstrating the embeddedness of the process in a regulatory context specific to the case study. She also emphasized problems with the informal reliance on the office from Sao Paulo as the foundation for the city centre PPP legal framework. In interview, the legal advisor of the Secretariat mentioned that the local government suggested the participation of local actors with expertise in the municipal legislation:

*There are cases in which I can say 'Can you hire my friend, she's good, and you can help her', but it is another thing if I say 'Hire person x, because she deeply understands a certain subject.' From the beginning, we said that there were people who already worked in this area of urbanism here in Fortaleza, in those same issues. But then an office from Sao Paulo? They did not know our reality here in no way possible.*

However, the local government did not control or coordinate the elaboration of the city centre PPP and did not enforce its suggestions for the composition of the technical team, which was decided by consultancy directors on behalf of private investors.

Furthermore, the City Centre Secretary and the advisor were lawyers and their professional background influenced the emphasis given on the lack of compatibility of the policy design with the local urban legislation. Although this was the explicit justification given by the public sector, there were other inconsistencies in the project design that made it unsuitable for Public Consultation, but which were not acknowledged by the official rejection of the local government.

The exploratory analysis of the process highlighted other problems with the elaboration of the final PPP project. The final document failed to demonstrate that the PPP project designed would be able to respond to the urban mobility problems in the city centre, as these were the initial policy objectives of the municipality. This was a legal requirement indicated in the PRI publication and in the PPP Law. Moreover, for publication in Public Consultation, the PPP project was not well structured and consistent to attract private parties with an interest in investing in the city centre, especially because it did not clearly demonstrate the financial feasibility of the city centre PPP intervention. Furthermore, the final document did not present a 'value for money' assessment, demonstrating the cost-effectiveness of the PPP, as well as the comparative advantage of using the PPP instrument for the city centre policy intervention with respect to other policy delivery tools available. According to the PRI publication, this assessment was another criterion for the evaluation of the studies by the local government. The publication required a comparative analysis of economic feasibility and cost-benefit of proposed projects with alternative solutions (item 6.3.4., PRI n. 01, 2011), which was not submitted along with the other documents.

Despite these problems, the main official concern of the City Centre Secretariat was the legal deficiencies in the final documents, and the local government formally gave the consortium of private investors an additional period for adjustments in the studies, which would run until December 12, 2011. In interview, when asked about the reasons for the adjustment period, the Secretary explained that even though the studies did not meet her expectations, she perceived the additional time as an improvement to the process. For her, the public sector had the responsibility to guarantee a well-designed city centre PPP

project to stimulate the competitiveness of the tendering process and to attract other private companies interested in implementing the project:

*I see it more as an improvement of the [PRI] mechanism so that when the tendering protocol is published we won't run the risk of no private sector becoming interested. We also have this responsibility, it's not a joke. We want this to go public via tendering process, and we want the private sector to become interested in this PPP (City Centre Secretary).*

Although the local government via the City Centre Secretary agreed to give an additional period for adjustments, she also failed to evaluate the appropriateness of the strategy that had been adopted for the formulation of the city centre PPP. There were no reflections that the instrumental approach initially selected was not in line with the complexity and contextuality of the process.

## **8.5 Summary of Chapter**

This chapter showed some impediments which imposed obstacles to the formulation of the city centre PPP project, but did not derail the process in the case study. Although actors encountered some constraining issues in EPISODE 2, they were able to move past them through their interactions. On the other hand, actors' continuity in the process despite impediments left consequences that were evidenced towards the end of EPISODE 2. The constraining elements included the contextual influence of legal and regulatory fragilities, organizational and coordination issues, perception of unfavourable political culture, as well as issues related to adjustment in relations, perceptions and opinions according to their contextual circumstances. The summary of this chapter is organized in terms of the elements of the 'systemic institutional arrangement' produced through actors' interactions in EPISODE 2, and each element focuses on the interplay between embedded and innovative 'ways of thinking and acting'.

### **8.5.1 Systemic Policy Arrangement**

In the policy arrangement of EPISODE 2, public and private actors were capable of overcoming internal embedded perceptions of suspicion and distrust in their relations, but still perceived the existence of an adverse and suspicious political culture context against the PPP, which influenced their decision-making strategies. In the previous EPISODE, actors overcame embedded scepticisms and insecurities against public-private relations by

focusing on their reciprocal interests and interdependence in order to agree on the urban mobility scope for the city centre PPP intervention. However, the influence of political culture was carried over from agenda setting to EPISODE 2. This included perceptions of historical public-private distrust and suspicion which could lead to obstacles and resistances and the perception that PPPs as policy instrument had not been included in the political agenda of elected officials, media and society. Actors involved in the formulation internalized the prioritization of PPP as policy instrument for the urban mobility scope; but their embedded perspectives of an adversarial local political culture influenced a process of 'political consensus building' to persuade society to also accept PPP as priority. However, this mobilization compromised the final quality of the PPP design.

### **8.5.2 Systemic Legal Arrangement**

EPISODE 2 was characterized by a fragile systemic legal arrangement. It was formally based on the Municipal PPP Law, which had been published in June 2011, but it was not culturally internalized by public and private actors, who were still learning about PPPs. Actors overcame the fact that they did not have a solid PPP legal arrangement and lacked experience in PPP legal requirements by mobilizing the capacity of a legal office from Sao Paulo with perceived expertise in Public-Private Partnerships. However, the informal participation of the office did not guarantee legal consistency of the PPP project design, especially considering its long distance interaction. The office representatives did not check, for example, that the final documents lack of a 'value for money' assessment. Moreover, the formal systemic legal arrangement was also composed of the local urban legislation, the Municipal Master Plan (Law n. 062, 2009), and by the federal decree-law on property expropriation for public utility (Decree-Law n. 3365, 1941). This demonstrates that the formulation process was also embedded in a local regulatory context. The Sao Paulo office did not emphasize the publication of compulsory purchase decrees as legal requirements for the acquisition of properties which were not yet owned by the municipality. It also lacked knowledge of the local urban legislation which resulted in inconsistencies in the technical specifications of the PPP project, considering that the construction parameters in the technical studies were not in accordance with the urban legislation (Municipal Master Plan). Legal problems in the end of EPISODE 2 also highlighted the absence of public sector coordination and control during the process to secure the legal adequacy of the documents being prepared.

### **8.5.3 Systemic Organizational Arrangement**

EPISODE 2 was also characterized by a fragile systemic organizational arrangement. The process at this stage lacked coordination from the public sector, private investors and consultancy actors. The public sector fragile organizational and technical capacity in PPPs and investors' lack of previous experience in contracting out relations with the public sector contributed to their complete reliance on the local consultancy for coordination of the PRI pre-tendering stage. However, consultancy coordinators were not able to exercise control over the activities based on the instrumental plan created for the process of PPP formulation. In a second moment of EPISODE 2, when the strategic arrangement was adjusted, the process continued without coordination and leadership, but it was not completely derailed because of actors' initiative, collaboration and network-relations. The process of PPP formulation in EPISODE 2 lacked internal and external control, allowing technical premises to be influenced by political decisions and compromising the quality, coherence and accountability of the project designed.

### **8.5.4 Systemic Strategic Arrangement**

The analysis of EPISODE 2 showed the difficulties of using an instrumental strategy for the formulation of a complex project. The instrumental approach disregarded the network of interdependent actors ('project finance' concept) and the dynamic of interactions needed for linking the numerous studies prepared for PPP project formulation. The analysis also showed that actors were able to engage in a more flexible emergent strategy which allowed simultaneous document elaboration and technical specification, for easier adjustments based on changes in decisions throughout the process. However, the analysis also emphasized that lack of coordination and control over a flexible strategy in a complex scenario which is influenced by contextual factors can lead to technical deficiencies in the PPP project. In EPISODE 2, there was no overall coordination or control to guide and integrate the process under the emergent strategy. Moreover, the lack of coordination and the contextual responses to political culture took over the process, influenced technical decisions and compromised project quality.

## 8.6 Conclusion

The following aspects characterized actor-relations in EPISODE 2:

- the replacement of an instrumental strategy with a more flexible approach to project formulation;
- lack of coordination and control;
- fragile legal arrangement and internal knowledge on PPP legal procedures; and
- technical decision-making based on ‘political consensus building’.

Although the construction, enactment and adjustment of the ‘systemic institutional arrangement’ was not enough to support actors towards completion of the stage and the process of ‘political consensus building’ compromised the project’s technical consistency, this EPISODE also provided positive lessons:

- The interactions under an emergent strategy highlighted actors’ capacity to self-mobilize and improvise in face of obstacles (i.e. lack of an adequate plan and coordination); and
- The analysis revealed the importance of ‘soft capacity elements’ such as initiative, collaboration and construction of a technical network for information-sharing and decision-making.

As a result, the rejection of the studies at the end of the EPISODE was not sufficient to obstruct the continuation of actors in the pre-tendering stage. As the next Chapter will demonstrate, these seeds of soft capacity elements grew into ‘commitment packages’ in EPISODE 3, which helped in overcoming frustrated expectations that the process would reach Public Consultation faster, especially after the municipality’s rejection of the project.

However, although in this EPISODE public, private and consultancy actors increased participation and became more active coordinators, the problematic consequences of a fragile legal and organizational arrangement (especially lack of internal control) remained, such as ignoring legal requirements for property compulsory purchase and legal urban constraints on project premises (construction parameters of 80%).

The next stage of the process, EPISODE 3, is analyzed in the following chapter. Actors adopted a new approach for PPP formulation which changed the ‘systemic institutional arrangement’. The new approach, which deliberately considered complexity,

flexibility and involved more active coordination, helped to overcome frustrated expectations and was more appropriate for the characteristics of formulating a PPP project, which requires constant document adaptation and decision-making adjustments. The new approach was also able to support the process towards completion of the pre-tendering stage and lead to Public Consultation, but it left some problems for the long-run. As it will be discussed in the last section of Chapter 9 (item 9.6), the flexibility of informal decision-making to overcome bureaucratic administrative procedures, along with fragile internal control and limited knowledge on legal requirements, compromised the project's fiscal, financial and social accountability.

## **Chapter 9 - Descriptive-Analysis of EPISODE 3**

### **Actor-relations in the re-adjustment of the ‘systemic institutional arrangement’**

#### **9.1 Introduction**

In EPISODE 3, actors adjusted the ‘systemic institutional arrangement’ in terms of the policy, organizational, legal and strategic approaches for finishing the city centre PPP project and the pre-tendering stage. This EPISODE covers the extension period provided by the local government after rejection of the studies at the end of the previous stage. This period started in December 2011 and finished with the publication of the PPP project for Public Consultation, in June 2012. This chapter analyses the EPISODE 3 in two stages:

1. Adjustment in the ‘systemic institutional arrangement’ with respect to its elements:
  - Policy Arrangement
  - Organizational Arrangement
  - Legal Arrangement
  - Strategic Arrangement
2. Period towards completion of the PRI pre-tendering process leading to the publication of the PPP project for Public Consultation.

In EPISODE 3 actors focused on overcoming the problems of the first two stages of the preparation process, especially after the rejection of the studies by the Sectoral Secretariat. In EPISODE 3, actors overcame frustrations and insecurities and created a new arrangement for the interactions. They built new connections and some actors took on new roles. They also invited new actors to participate, increased their own participation and coordination in the preparation process and designed new informal routes to overcome bureaucracies.

#### **9.2 Policy Arrangement: the role of ‘commitment packages’**

After the local government rejected the PPP project design at the end of EPISODE 2, actors had their initial expectations frustrated. Many interviewees highlighted the low quality of the documents and the difficulties faced in the formulation process. Despite acknowledging the problems in the process, actors were committed to making the partnership work, envisaging the future benefits of its success. To stay motivated despite



the absence of a legal contract binding them in the informal PRI process, actors relied on commitment packages they had been constructing and reinforcing, which were based on political, business and technical commitment elements. Public, private and consultancy actors were able to overcome frustrations, to increase participation and coordination over the process and to work together as they recognized their interdependences, as well as the adequacy and advantages of formulating the PPP project in order to meet their reciprocal interest. Actors' commitment to the process was also influenced by perceptions that the obstacles from adversarial political culture were under control as a result of the 'political consensus building' strategy in EPISODE 2. They also recognized the need for changes in the strategic approach, especially considering contextual particularities. Commitment was also influenced by actors' acknowledgements that the city centre PPP was the first of public and private actors, which represented a learning experience. A specific analysis on the three groups is presented next.

### **9.2.1 Public sector**

Local government actors continuously expressed political commitment to the city centre intervention, which was important for keeping them and other actors engaged in the preparation process despite the initial problems. They acknowledged the municipal dependency on the involvement of the private sector, especially the need for resources for project formulation and for the implementation of the PPP initiative. Actors from the local government also increased their participation as coordinators and gave more inputs in technical and financial decisions on the PPP project. These elements inspired collaboration, persistence and tolerance from public sector actors despite initial frustrations.

Interviewees from the local government acknowledged the complexity of the formulation and shared frustrated expectations that the PPP project would be easier to formulate. In EPISODE 3, they recognized they had underestimated the difficulties of formulating the city centre PPP. The following quote from the interview with the City Centre Secretary illustrates that for public actors the perceived benefits of using the PPP instrument influenced overcoming lack of experience and the problems of the previous EPISODE:

*The PPP has increased the resources available to the municipalities but based on many rules that culturally we will have to learn how to live with; both the public and private sectors. It is a big challenge. I confess that sometimes I get discouraged but I*

*think this instrument is so rich to construct a solid project. The construction of this is so complex. In the beginning we thought it would be easier to do it. In the beginning, we had the expectation that it would be fast to construct the lots and PCCs, but it's not how it works. And we are only seeing this now as things are progressing; based on all the problems we have been facing.*

Moreover, actors from the local government also understood the importance of context for the formulation of a PPP project and learned that to simply copy the instrumental model of the state government was not ideal for the PRI formulation of the city centre PPP. They acknowledged the relevance of the specificities of the city centre PPP project. The City Centre Secretary, for example, commented in interview on the formulation of the football stadium and compared that PPP case with the contextual difficulties of the city centre formulation:

*The state government was able to do the PPP [of the Football Stadium], but the level of difficulty cannot even compare to ours. Why? The Stadium was already owned by the public sector. There was a very specific scope. There is the World Cup coming up; several other things. But for us, we are intervening in private property ownership; we need to increase the construction parameter in the city centre area, so many little things.*

Similar to public actors involved in EPISODE 3 of the pre-tendering stage, private investors also relied on their own commitment packages to stay committed and motivated despite frustrations and delays in the progress of the PPP formulation process.

### **9.2.2 Private investors**

In EPISODE 3, investors had frustrated expectations that the process would reach conclusion quickly. They still had insecurities, especially in relation to their lack of knowledge of the PPP theme or in public-private relations. On the other hand, they stayed committed to the process by focusing on other aspects. They hired other actors with experience in PPPs to help in the process and increased their participation in discussions. They acknowledged that this was the first PPP of most public and private sector actors involved, which would require learning experience. An investor mentioned that it was a learning experience even for the consultancy general director, who was perceived as the person with the most PPP experience among the actors:

*It's been the first PPP, and in life everything that comes first it's harder, it's more complicated. The consultancy's general director is very good, but for him the learning experience was also very good. (...) It's different when you read the legislation on PPP and understand it from when you are actually going to put it in practice. (...) So the process is a learning experience as you go along. You get to see in practice what you've learnt in the books. PPPs are mostly in the books, because what's out there is insufficient (private investor 1).*

Investors also focused on the fact that the city centre intervention was a good business opportunity, which motivated their participation and commitment to the process despite the problems. Another aspect that contributed to their commitment was the interactions during EPISODE 3 with the public sector and organized by the consultancy, especially with respect to defining risks mechanisms to the business opportunity. Even though investors were constantly overcoming insecurities, their active participation in designing the PPP intervention kept them committed to the preparation. Throughout the EPISODE, investors also counted on the political commitment expressed by the public sector to the PPP intervention (mostly from City Centre and Finance Secretaries and the mayor), on perceptions that the intervention was a priority for the city, on previous implemented strategies of 'political consensus building', as well as on the dependence of the public sector on private resources. All of these aspects represent an energy that kept investors committed to the PPP preparation process. Comments from the interviews with private investors illustrate these perceptions shared by the group:

*There is the interest of the City Centre Secretary, and she has been very dedicated. So this has given a condition for it to flow better. And obviously this group of private investors is very engaged. I think we've been dedicated for over a year, constantly participating in meetings. And the work of the consultancy is also very good, which has been giving us a secure direction and to the process (private investor 4).*

*I think that, one, there is the political will of the City Centre Secretary to make this happen; two, persuading the mayor; and, three, the group of private investors included strong political ingredients in order to make the local government really want to implement this (private investor 2).*

Like public and private actors, consultancy directors also relied on commitment packages, especially considering the need to maintain the trust deposited in its expertise by the other groups.

### 9.2.3 Consultancy

The consultancy also had expectations frustrated at the end of EPISODE 3, which led to insecurities. The consultancy was perceived to have a high level of knowledge in PPPs and preparation process and the most comprehensive methodologies and plans. As a result, a main aspect that influenced the consultancy focus on improving the process was the need to maintain the credibility and trust it had developed mainly with investors, but also with the public sector.

Despite insecurities due to the initial rejection, consultancy directors recognized that it was a learning experience, as the following comment from a director illustrates: *“So everything that happens to be the ‘guinea pig’, the first process, is painful. It was an initial mistake that everybody thought the thing would be much more fluid” (technical director)*. Directors also started to reflect on EPISODE 2 and recognized the problems, such as the deficiency of the quality of the material submitted, which is illustrated by this quote: *“It was noticed that all the technical production in those 3-4 months was basically with no technical consistency, without any basis of information. It lacked expression. It had no consolidated technical foundation” (general director)*. Directors also acknowledged the coordination problems in the process, which led to non-integrated and inconsistent PPP documents:

*In several studies there were things written that made no sense. (...) If there is only one person that can do it and has knowledge to orient a team then the process goes well, but there wasn't anybody in the team structure. The person who was initially coordinating the process had no idea of what they were doing, and in the end we prepared this project without a solid basis, totally fluid (technical director).*

After the city centre PPP project was rejected at the end of EPISODE 2, consultancy directors developed motivation to adjust the material in EPISODE 3. They increased technical commitment and changed the focus from results to process performance in order to improve quality of the material. Directors were concerned about the credibility of the consultancy regarding their role in the market as specialists in PPP preparation processes.

This led actors to change the ‘way of doing things’, from focusing on plans and products to intensifying actors’ interactions and coordination.

#### **9.2.4 Summary of Section**

This section showed that despite recognizing the problems in the previous EPISODE, public and private actors and consultancy directors continued in EPISODE 3 with the PRI pre-tendering formulation of the city centre project by relying on ‘commitment packages’. The previous difficulties did not derail the process despite the informal character of the PRI arrangement and did not change actors’ priorities in using the PPP instrument for the city centre intervention. A summary of the commitment of public and private actors and consultancy directors is illustrated by a comment from the interview with a consultancy director:

*The discussions started to improve from the moment we handed in the documents and studies, when the City Centre Secretary started to participate more effectively, and invited the technicians of the Finance Secretariat, with the participation of the Secretary. (...) The consultancy (...) involved people who had more experience, more expertise, more knowledge, and this also improved the process a lot. (...) And third, there was certain alienation of the authorized private consortium; they were the least engaged in the process. (...) But it is better now; investors decided that they needed to know the process better.*

The increased participation from private investors, public actors and consultancy directors influenced a change in the systemic organizational arrangement, which is analysed next.

### **9.3 Organizational Arrangement**

In EPISODE 3, the new organizational arrangement for the city centre PPP formulation was influenced by a more active position adopted by directors, public and private actors to assure the overall quality and integration of the project material. Consultancy directors participated more actively as coordinators, which influenced improvements in the city centre policy design. Public and private actors also became more engaged in the discussions, not only providing inputs for the documents, but also with coordinating roles.

In EPISODE 3, the consultancy changed its way of interaction, especially with respect to the role of directors. Instead of assuming that technical actors and coordinators could conduct the process alone, senior directors took the role of coordinators. A comment from one of the directors demonstrates this: *“We started to give a more effective response; there was a better orientation for the team. Our involvement helped to organize it better, more from a management perspective than technical” (technical director).*

In EPISODE 3, the technical director was responsible for the interactions of the technical team with the Sectoral Secretariat, while the general director continued to lead discussions between investors and the City Centre and the Finance Secretaries. The exchange of information between directors was then passed on to the technical team. This was a way of assuring that the inputs from investors and Secretaries would be included in the studies. In contrast to EPISODE 2, when the initial dialogue only took place with the PPP Unit, perceived as the main coordinator for the process, consultancy directors considered in EPISODE 3 the ideas and contributions of the Sectoral Secretary as the entity that would approve the studies. A consultancy director acknowledged the need for a change of organizational focus in interview:

*There is the technical Secretariat, the City Centre Secretariat, which was responsible for technically approving the studies, but most of the dialogue happened with the Managing Council, the PPP Unit, in which there wasn't any specialist with technical knowledge on the problem to be solved (general director).*

In addition to that, the consultancy also assumed a clearer role to mediate the discussions between public and private sectors, focusing on answering to the interests of investors in order to guarantee their commitment, as well as to the demands of public sector actors, especially the Finance and City Centre Secretaries. It executed this role by promoting meetings between the two sectors. The consultancy perceived that for investors to continue in the preparation process, it was important to focus on designing a PPP intervention that was favourable in their perspective. Similarly, for maintaining the commitment of public sector actors, directors realized it was important to take their perspective into consideration as well.

From the public sector, the City Centre Secretary and the Finance Secretary participated more actively and also exercised coordinating roles during the adjustment period. Public actors recognized the complexity of formulating a city centre PPP policy and

decided to participate more as coordinators, following the discussions more closely. After the submission of the documents at the end of EPISODE 2 (November 2011), actors from the City Centre Secretariat recognized their lack of capacity to evaluate all the PPP technical studies and decided to involve other actors from the local government in the interactions, especially the Finance Secretary. Interviewees from the public sector commented that the Finance Secretary was “*very qualified and competent*” (PPP Unit Secretary). Actors in the public sector believed the Finance Secretary had the best technical capacity to evaluate the material in terms of its financial and fiscal adequacy to the municipality. To illustrate, the legal advisor to the City Centre Secretariat recognized in interview the importance of involving the Finance Secretary:

*I was worried because I thought we were creating a project of this size, basically me, the Secretary and a few other people from the Secretariat. We have a very fragile structure here. (...) But the Finance Secretary will be able to give a financial analysis that will provide another vision and opinion on the level of financial and fiscal commitment from the municipality, on what it can give or not as guarantees.*

The group of private investors also became more participative. Although they acknowledged that they did not have extensive capacity to evaluate and conduct the preparation process, investors decided to be more actively engaged as coordinators. They hired local executives with prior experience in PPPs and PRIs to advise them in the process and to intermediate their dialogue with the local consultancy. This is illustrated by a quote from an interview with a private investor: “*We hired two Executives to audit the entire process, who are people with experience in tendering process, who understand public organizations, in order to take a look at the entire material and see if we are in the right and secure path, and to hear a second opinion*” (private investor 2).

In addition to that, a private investor took leadership over the group, who is referred in this research as the ‘Entrepreneur’. He had an active role in the discussions over demand risks, analyzed later in this chapter. He was an experienced businessman with investment participation in PPPs and parking lots businesses around Brazil. As the following quote from a consultancy technician involved in the adjustment period confirms, the role of the Entrepreneur was significant as the coordinator and leader among other private investors:

*He's the one who controls the process. Last meeting [March 12, 2012] we were questioned; me, the legal advisor and the technical director. They kept questioning and questioning us. I'm glad we took all the material to show them, the documents and everything. And all of the questions were asked by the Entrepreneur: 'and this and that, what if you make it this or that way?' All of the questions were from him (consultancy legal specialist).*

The analysis of this section showed that consultancy directors, public and private actors adopted more active roles as coordinators in EPISODE 3. Based on perceptions that difficulties involved in the formulation of a PPP project were neglected in the previous Episode, they adjusted their strategic behaviour for EPISODE 3. The coordinators over the process who also acted as institutional entrepreneurs in promoting and implementing the new approach included:

- Public sector: City Centre (Sectoral) Secretary and Finance Secretary;
- Private sector: 'the Entrepreneur', who was the private investor with the most experience in large business ventures and public-private relations;
- Consultancy: general and technical directors.

## **9.4 Legal Arrangement**

In EPISODE 3, the formal systemic legal arrangement was composed by the Municipal PPP Law published in June 2011 setting rules and procedures, and by the PPP Decree published in December 2011, which formally created the PPP Unit and Managing Council. Nevertheless, since public actors lacked experience in PRI pre-tendering formulation of PPP projects and the legal PPP framework had only been recently implemented, actors continued to informally rely on the legal office from Sao Paulo for legal guidelines.

In contrast to EPISODE 2, there was an improvement in the legal arrangement as the office acknowledged the problems in the long distance interaction with the consultancy team and hired a local lawyer as the office's representative in Fortaleza to follow the process more closely. Interviewees mentioned that the ability to make connections with actors in the local government was essential for the progress of the PPP process, which was previously a non-fulfilled condition by the Sao Paulo office. This perception is exemplified by the next quote from a technical actor involved in the formulation process:



*I think it is 'ok' for them to be from outside of the city, but it is important for them to have someone here. Considering the local and state governments, you need to be able to talk to someone; you need to have a relationship with someone. You need to know someone for things to progress (consultancy administrative coordinator).*

During EPISODE 3, although public actors increased coordination in the new approach, they did not control and coordinate the legal aspects of the PPP project design, which was in the hands of the Sao Paulo office. Throughout this stage, although public actors participated as coordinators and validated premises as the documents were elaborated, the Sao Paulo office held the main responsibility for assuring the inclusion of legal requirements in the PPP design. The local presence of the legal advisor facilitated the simultaneous adjustment in documents as premises were defined and modified during EPISODE 3. However, problems from the previous EPISODE continued as the office did not enforce or account for the contextual regulatory specificities of the city centre PPP. It was necessary knowledge about the local urban legislation for change in construction parameters and the adequacy of following the federal decree on procedures for property expropriation. This required publication of compulsory purchase decrees so that the municipality could have ownership of properties and legally used them in the project. Similar to the previous EPISODE, public actors failed to control these specific legal aspects, and the problems continued throughout the entire EPISODE 3.

Furthermore, with respect to the overall legal arrangement of EPISODE 3, this chapter analyses later an adjustment in the arrangement. It mainly involved the participation of public actors in an informal route towards completion of the PRI pre-tendering process and publication of the PPP project for Public Consultation. However, the legal problems that were carried on from EPISODE 2 stayed the same until the completion of the PRI pre-tendering stage and publication of the PPP project for Public Consultation.

## **9.5 Strategic Arrangement: the 'learning by doing' approach**

In EPISODE 3, actors engaged in a new strategic approach that will be called 'learning by doing' in this analysis. The new strategy was influenced by actors' reflections on the problems resulting from neglect of context in EPISODE 2, and new awareness of the complexity involved in formulating a PPP project. It was also influenced by actors' improved coordination and participation. The 'learning by doing' approach involved discovering, through the challenges created and perceived in their interactions, that complexity was

present in the PPP formulation process. Actors' adjustment in opinions and decisions through their interactions was reflected in modifications in the PPP project and in the flexible strategic approach for the process. For example, during EPISODE 3 the public sector understood that the initial timeframe of the instrumental strategy was not adequate and extended the deadline until the premises were adequate and the project ready for Public Consultation. The following comment from the City Centre Secretary demonstrates this:

*We are trying to say 'private sector, please come', and a good business opportunity is only good when it is good for both sectors. It cannot be different from a relation that happens between two companies in the private sector. And this equilibrium we are getting now with the studies. As long as we don't get this equilibrium, in which it becomes attractive to the private sector, getting this very rounded up, showing that it is a good deal for both the public and private sectors, it won't be published.*

Three areas demonstrate actors' engagement in the 'learning by doing' strategy:

1. Conciliation between public and private actors over pecuniary payment composition, demand risk and compulsory purchase costs;
2. Concerns with political risks and agreement on the pecuniary payment guarantee arrangement to be offered by the municipality for the city centre PPP;
3. Adjustment in the PPP project design after discussion with the mayor for validation.

#### **9.5.1 Conciliations between public and private actors over pecuniary payment composition, demand risk and compulsory purchase costs**

The analysis in this section will show that actors were able to reconcile interests and opinions on technical premises and adjust the PPP project design at the same time. It will demonstrate that flexibility of strategy, actors' capacity to compromise and active participation and coordination facilitated adjustment in premises and agreements during the process. These premises had been defined in EPISODE 2, but not validated between public and private actors. Although the pecuniary payment composition was defined in the previous Episode without the agreement with the local government, when public actors learned about the format in EPISODE 3, they were tolerant and committed to adjustments and compromise. However, the analysis in this section will highlight the problems left from the political influence on the elaboration of the demand study, which was used to justify the selection of properties based on the need for 'political consensus building'.

The financial model of the PPP project submitted at the end of EPISODE 2 included the assumption that during contract execution the private sector would assume the immediate costs of compulsory purchase, while the local government would reimburse the concessionaire through monthly instalments of pecuniary compensation over the contract period. In EPISODE 3, the City Centre Secretary and the Finance Secretary found out about another premise that was not validated with the local government because it had only been internally discussed between technicians and private investors in EPISODE 2. The premise determined that public pecuniary compensation was also a function of service provision. According to the model, besides paying property expropriation costs in instalments, the public sector would also be obliged to pay a complementary monthly amount for the number of parking spaces and commercial centre (PCC) boxes made available to users through the PPP intervention. When the financial model was analysed by the Finance and City Centre Secretaries in EPISODE 3, this portion of the pecuniary compensation was not validated.

During meetings in EPISODE 3, Secretaries argued that payment from the municipality for service provision was not necessary because the city centre demand for parking spaces and boxes was already high enough to secure revenue for the project's feasibility and financial return to investors. Therefore, the public sector required a modification in the financial model. In order for the city centre project to still qualify as PPP, in which compensation from the public sector is a legal requirement, actors maintained that the local government would be responsible for paying back the costs of property acquisition to the private sector.

The adjustments requested by the local government influenced an increased participation of investors. After the requirements from the Secretaries, investors started to consider the financial sustainability of the project. Since the government refused to pay a complement for service provision, the service revenues for the project would have to come only from the parking tariffs and commercial centre (PCC) box rent to be charged from service users. This would have to be enough to guarantee financial return and cover the up-front costs of compulsory purchase. Private investors understood that they would now have to assume the project's demand risks for both parking and PCC service provision. As a result, private investors and the consultancy reflected that in EPISODE 2 they did not pay attention to the quality of the demand study to assess the situation of the services for the

city centre PPP. They started to recognize the embeddedness of the city centre PPP in the economic context of Fortaleza.

In EPISODE 2, the demand study was only used to justify the selection of properties based on their derelict and underused status to prevent judicial and political obstacles to their acquisition. In EPISODE 3, however, investors realized that the weak demand study could compromise the financial sustainability of the intervention, especially considering the municipality would not assume demand risks or pay for service provision. Private investors interviewed during EPISODE 3 showed concern with selecting properties that could not create demand for the services, as illustrated by the following quote:

*I think that definition of the properties is a key step because without the correct definition the process becomes fragile. If the selected area does not create the appropriate demand for parking spaces or even for the PCCs, the project won't happen. The areas are very important (private investor 4).*

Consultancy directors acknowledged the consultancy's fault for not having identified demand risks during the formulation process in the previous Episodes. They were aware that the risk analysis discussed during the PPP Unit meetings had not accurately identified the risks of the city centre intervention. According to the interview with the general director, the PPP project design should have included an assessment document with the risks of the project, including demand risks, indicating their allocation and suggesting mitigation mechanisms.

In the absence of a risk assessment, private and consultancy actors found another way to mitigate demand risks and tried to allocate some of the responsibility to the public sector. The insecurity created with the poor demand study was overcome with this new alternative in the studies, with which the local government agreed. Different from what public actors had argued, directors and private investors asserted that demand for parking services was risky considering the number of irregular parking lots still operating in the city centre. For them, this represented competition for the parking services to be provided in the PPP intervention and could turn the project financially unfeasible. According to meeting memos and interviews, the government accepted the argument of private investors, which shows public sector flexibility and capacity to make concessions and compromise in order to reach agreements in project premises. A private actor shared in interview the argument used to convince the local government to partially assume the demand risk:

*The success of the structured parking lots directly depends on the action of the local government. If it prohibits irregular parking lots and disciplines parking on the streets, the parking lot business will become feasible very rapidly, because people won't stop going to the city centre. (...) These irregular lots, we know, will involve the judicial system. The municipality will try to close them, and the judicial system will say not to. The [irregular] operator will probably have a provisory license; the judicial system will probably say he has a definite license to hold the thing. So it is also a very complex thing. It is not just an action. It is an action which will reflect in the judicial system. So, for that lot to be closed, it can take years. This is a direct competition to the structured parking lots. (private investor 6).*

In summary, according to the agreement reached, the local government would pay higher compensation for parking services and lower compensation for PCC services, since street vendor demand for boxes in commercial centres was considered high. However, to reduce the burden on the municipal budget, public actors decided to take over the payment of compulsory purchase, so the local government would no longer have to reimburse the private party for these costs during contract execution. By changing the object of public pecuniary compensation from property costs to partial payment for service provision, public actors reduced the burden on the municipal budget and showed capacity to adjust technical premises and find alternatives in order to compromise and keep the pre-tendering process going.

Public actors compromised and decided to take over costs of compulsory purchase because they found a fiscal alternative to pay for such costs. According to interviews and meeting memos, the local government was counting on the use of tax debt settlement to acquire the properties for the city centre PPP (Urban Real Estate and Land Property Tax or *Imposto sobre Propriedade Predial e Territorial Urbana* - IPTU). If owners had outstanding property tax debts with the municipality, depending on the market value of the properties, they could be acquired via debt settlement reducing even to zero the acquisition costs of some properties. In interview with the Finance Secretary, he explained the property outstanding debt situation in Fortaleza: *"We still have 35% of default with property tax [IPTU]. In the past we have reached 49%; so basically for every two properties, one was not paying IPTU; and today it is still a lot"*. In this discussion, it became clear the embeddedness of the PPP formulation process in a fiscal context which actually facilitated the negotiations

and compromise between actors. Private actors also commented on the changes required in the studies after this agreement, as the next quote illustrates:

*In the beginning, the private sector would give the money [for property acquisition]. Then the municipality said not to include it. Then the study was re-done without including in the pecuniary payment the cost of property acquisition because the Finance Secretary said that perhaps the municipality wouldn't even need to disburse anything. Since there were IPTU debts, he could acquire them through debt settlement. (...) This changed a bit, but it was a decision agreed with the local government (private investor 6)*

During these discussions in EPISODE 3, consultancy directors, public and private actors were constantly interacting with technicians for adjustments in the financial model and legal documents. Considering the discussions analysed in this section, the adaptations in the PPP documents included modifications in the contractual clauses for demand risk mitigation, compulsory purchase payment and pecuniary payment composition. Differently from EPISODE 2, public and private actors were validating the elaboration of the overall project design while discussions were taking place. Public actors no longer expected to validate premises and decisions after the submission of the final documents. As soft capacity elements, actors revealed capacity to adjust, to conciliate interests and to compromise in order to stay committed to the informal PRI pre-tendering process. This section also shows that public, private actors and consultancy directors enacted a 'learning by doing' approach and participated more actively as coordinators and decision-makers during the PPP formulation process.

### **9.5.2 Concerns with political risks and agreement on the pecuniary payment guarantee arrangement to be offered by the municipality for the PPP**

The analysis of this section will also show actors' mobilization in a 'learning by doing' strategy for improving the city centre PPP project. It will reveal that actors dealt with insecurities from embedded perceptions that long-term political risks could interfere with the city centre PPP intervention. For this, actors engaged in informal discussions and demonstrated capacity to compromise and agree on the format of the pecuniary payment guarantees from the municipality. The new format was adjusted since in EPISODE 2 the guarantee type defined had not been validated with the local government and, as a result, not approved in EPISODE 3.

Investors worried about political risks because the city centre PPP contract was set at 30 years. Thus, the execution period would overlap with different local administration terms. Based on the interviews, actors had embedded perceptions that the private sector in Brazil was insecure regarding contracts of long term such as PPPs with the public sector. For example, interviewees emphasized the short term vision of mayors and governors, and the lack of continuity of public policies over different administrations. A comment from a private interviewee illustrates the embeddedness of this vision in the context of Fortaleza:

*There is a big difficulty in the country considering PPPs because they are long term contracts; but we do not have planning, our administration terms are of 4 years, a maximum of 8 years. Politicians only think about one term and only about public works that will give results in that period; but PPP projects are not like that. This is a huge barrier to PPPs, the lack of planning, the lack of vision. If the municipality of Fortaleza had a plan to be implemented during a 20 year period, obliged to it, with the City Hall supervising it; but it doesn't have any of that. The plans are all prepared when the mayor takes office; that's when he or she decides what will be done. Sometimes he/she doesn't even finish what started before; not sometimes, many times; for example, 'that square was constructed by my opponent, so I won't look after it anymore, let it degrade', and so forth (private investor 6).*

Considering similar embedded perceptions and insecurities, investors wanted the municipality to demonstrate its commitment to the PPP also through pecuniary payment guarantees, to cover eventual municipal default in paying the agreed partial compensation for service provision, as discussed in the previous section. The next interview quote illustrates investors' concerns:

*I think that the only problem we face now is the guarantee from the municipality for that [pecuniary] payment, which we must be really secure about. That's all, the only undefined thing is how this guarantee will work, because today there is one person in the municipality, but tomorrow there will be another person, and the company will be there for 30 years. It could be any administration, and we cannot be subject to any administration. We must be secure in legal terms, in a process which guarantees that if we fulfil our responsibilities, we will receive their payment. This guarantee must be made clear (private investor 4).*

For the discussions over guarantees from the municipality, private investors and consultancy directors engaged in discussions with the Finance Secretary, who expressed in interview that he understood the political risk involved in a long term project such as the city centre PPP:

*The project cannot depend on me, on the current mayor, on the consultancy general director, on the current City Attorney General. It's long term, several administrations. Possibly, I will not stay; it's very likely because there is another political context. There is a process of transition in which this PPP is taking place. We will stay in office until December 30, 2012. We don't know what the political scenario will look like. But if the regulatory framework is very well defined, if the regulatory framework is consented upon between the sectors, the process is solidified.*

Considering that public and private actors had similar embedded perceptions of long-term political risks, they engaged in discussions in order to settle a guarantee arrangement. For discussions over guarantees with the Finance Secretary, investors and consultancy directors scheduled an informal meeting at the Brazilian Development Bank (BNDES), the agency expected to provide the long-term loan for private investment in the city centre PPP intervention. According to the interviews, private investors and the Finance Secretary agreed that the opinion of BNDES was important for the city centre intervention. Both sectors understood the systemic embeddedness of the city centre PPP formulation in a financial context. The municipality depended on private financing for the execution of the city centre intervention, and private investors depended on the Bank to acquire the resources for the implementation of the city centre PPP.

In interview with private investors, they emphasized that long-term financing was important because they could not support alone, through equity, the level of investment required for the implementation of the city centre PPP. The following comment from one investor illustrates this point: *"We have also been thinking about the financial alternatives we need in case we win the tendering process, because we don't have the resources to absorb this without financing"* (private investor 5).

Public and private actors had the following objectives with this informal meeting:



- To demonstrate the financial feasibility of the city centre PPP project and the risk mitigation strategies to obtain favourable financing conditions from the Bank for long-term investment;
- To demonstrate that the scope of the city centre PPP was in accordance with BNDES' line of infrastructure financing;
- To consult BNDES on the types of municipal pecuniary payment guarantees that could reduce the Bank's perception on the project's credit risk (risk of default).

As the interviews show, private investors and the Finance Secretary knew that the financing conditions offered by the Brazilian Development Bank, especially in terms of interest rates, were attractive for projects in line with public infrastructure development policies. They were aware that among BNDES' lines, it financed infrastructure projects by private companies alone or in partnership with public entities. According to interviewees, the meeting at BNDES was an informal consultation to demonstrate that the urban mobility scope of the city centre PPP project was in line with municipal public policies for the central area of Fortaleza and in accordance with the Bank's infrastructure line of financing. Moreover, in the meeting, actors also explained the feasibility of the intervention and the demand risk mitigation strategies that resulted from actors' previous discussions.

Furthermore, actors used the meeting to obtain the opinion of the Bank's superintendent on the pecuniary payment guarantee they had designed for the city centre PPP to reduce perception of default risk and assure favourable financing conditions from BNDES. The arrangement of guarantee discussed in the meeting with the Bank resulted from a previous compromise between public and private actions, which is discussed next.

Prior to the meeting at BNDES, consultancy directors, private investors and the Finance Secretary discussed possible pecuniary payment guarantees for the city centre intervention. The private sector and the consultancy initially proposed pecuniary payments linked to municipal net current revenue. This premise had been included in the PPP project submitted to the local government in EPISODE 2, but not validated with public actors at that stage. However, after analysing the arrangement in EPISODE 3, the Finance Secretary strongly disagreed with this link because net current revenue was the main source of municipal investment in health and education, which would make impracticable the proposed guarantee arrangement due to tied fiscal obligations. Moreover, in interview he expressed an accountability concern with control bodies and mentioned that a burdensome guarantee arrangement to the municipality could create future problems for

the city centre PPP contract if the Court of Accounts decided to audit the premises of the PPP project design. The concern of the Finance Secretary demonstrates once more the systemic embeddedness of the city centre pre-tendering process in a fiscal context.

Although the link between guarantee and net current revenue was defined in EPISODE 2 without the agreement from the local government, in EPISODE 3, public actors were committed to adjustments and compromise. As a result, after discussions with the Finance Secretary and agreement of private investors, consultancy directors oriented technicians to adjust the tendering protocol and contract documents by removing from the design the guarantee link to the net current revenue. After the adjustment, public and private actors agreed that as the guarantee arrangement the local government would deposit the equivalent of 12 monthly pecuniary payments in a trust fund.

Actors' capacity to agree and compromise and the flexibility of the 'learning by doing' strategy were recompensed in the meeting with BNDES. Consultancy directors explained in interview that the BNDES superintendent accepted the new proposed guarantee arrangement and the risk mitigation mechanisms. They mentioned that he also recognized the adequacy of the city centre PPP with the Bank's infrastructure financing line and suggested an attractive long term interest rate. The meeting at BNDES also revealed the embeddedness of the PPP formulation in the financial context specific for the process, because in order for actors to be able to implement the city centre urban mobility infrastructure scope, which actors had constructed and prioritized for the PPP instrument, it was important that the BNDES also had priority financing lines for urban mobility infrastructure scopes.

After the meeting at BNDES, public, private and consultancy actors were satisfied with the results. Consultancy directors informed the technical team to adjust the financial model in accordance to the lower interest rate agreed with the Bank. Actors believed in the quality improvement of the PPP documents and wanted to move forward towards Public Consultation. As a result, investors, consultancy directors and the Finance Secretary participated in an informal meeting with the mayor to present the premises the PPP project and obtain her political support for publication of the documents for Public Consultation. This meeting led to new adjustments in the project design.

### 9.5.3 Influence of mayor in PPP project adjustments

In EPISODE 3, it became clear the importance of the mayor's validation on the project. This also reflected actors' engagement in the 'learning by doing' strategic approach. The interactions at this stage were informal and led to adjustments in project premises and in the technical and legal documents. Actors expected the mayor to validate the project and to accelerate the process towards Public Consultation. This section will show the dynamics involved in formulating a PPP project where decisions on premises depend on informal interactions and influence new and simultaneous adjustments in the technical documents.

In April 2012, investors, consultancy directors and the Finance Secretary participated in a meeting with the mayor. They presented to her the premises of the PPP project and crucial aspects for the feasibility of the intervention, including the commitment of the local government to close irregular parking lots in order to secure demand for the city centre PPP parking services. It was also emphasized the municipality's responsibility to publish compulsory purchase decrees and adjust the local urban legislation for the 80% construction parameter, based on which the studies at EPISODE 2 had been prepared.

According to the interview with consultancy directors, in the meeting the mayor placed a restriction in one of the properties selected and explained that the municipality had a commitment to city centre business owners to transform that space in a square. She accepted, however, the construction of underground parking lots in the property, as long as investors agreed to construct a square at ground level. This discussion demonstrates the city centre PPP formulation was embedded in a political context, in which the local government's commitment to interest groups had to be taken into account in the project design. After the meeting, the general director passed new technical premises and property adjustment guidelines to the consultancy technical team. These simultaneous modifications in the studies during actors' interactions in the adjustment period also revealed the 'learning by doing' approach guided by the participation of public, private and consultancy directors as coordinators.

The Finance Secretary led another discussion in the meeting with the mayor and asked for a reduction in the contract term from 30 to 20 years. The 30 year contract term was another decision taken at EPISODE 2, but which was not validated with the public

sector at that stage. Similar to other instances, actors were also able to reach a compromise on this issue in the meeting with the mayor.

According to consultancy interviewees, in EPISODE 2 investors decided to push the contract term for 30 years, but there was no validation with the public sector during that stage. Therefore, in EPISODE 3, the Finance Secretary argued that there was no need for the municipality to make a 30 year commitment if the financial model indicated that the project's financial return would take place in a much shorter period (*payback*). This would secure enough profit for private investors to compensate for the initial and upfront costs of the project. Interviewees mentioned that the mayor reinforced the arguments of the Finance Secretary to reduce the contract term to 20 years, and private investors accepted the request. Private actors compromised with the change in order to reach agreements, obtain the mayor's consent and move on. After the meeting, technicians had to once again adapt the technical, legal and financial documents of the project design in accordance with the change in the length of the contract term.

Public and private actors expected the informal meeting with the mayor to move the process fast towards Public Consultation. The following comment from a consultancy director demonstrates this perception: *"This process had an upgrade in the agenda; it went up to the mayor's agenda. She will follow it. The mayor liked the project a lot. She not only gave the consent, but also prioritized it"* (general director). The participation of the mayor actually gave a boost to the process. The interactions that took place in EPISODE 3 after the cabinet meeting, which led to Public Consultation and to the end of the PRI pre-tendering stage, will be discussed ahead (section 9.6).

#### **9.5.4 Summary of Section**

Despite actors' frustrations after the local government rejected the city centre PPP project at the end of EPISODE 2, actors rapidly adjusted their understandings and strategies and, consequently, the 'systemic strategic arrangement' influencing their interactions and prevented the informal PRI pre-tendering process from falling apart. In EPISODE 3, actors adopted a dynamic, flexible and fluid 'learning by doing' strategy similar to the one used in EPISODE 2, but complemented by increased leadership and participation of consultancy directors and public and private actors as coordinators. These actors became more participative after frustrated expectations with the rejection of project at the end of the previous EPISODE and by relying on 'commitment packages' (political, business and

credibility elements – discussed in section 9.2). This gave more guidance to the interactions for the simultaneous definition of project premises, technical re-formulation and adjustment of the PPP project. Moreover, the adjustment in premises during EPISODE 3 revealed that three aspects had been defined in EPISODE 2 without validation with the local government: pecuniary payment composition, guarantee format linked to net current revenue, and setting PPP contract term at 30 years. Despite this, through increased participation and coordination in EPISODE 3, actors from the public sector were open to discussions, adjustments and compromise. Three main areas revealed the ‘learning by doing’ strategic arrangement of the process and each area revealed important aspects in relation to actors’ embedded and innovative ‘ways of thinking and acting’:

1. Conciliation between public and private actors over pecuniary payment composition, demand risk and compulsory purchase costs:
  - Public and private actors used soft capacity elements to stay committed to the informal PRI pre-tendering process, which reflected their ability to reconcile interests and opinions, compromise and make concessions on technical premises and simultaneously adjust the PPP project design;
  - They recognized the embeddedness of the city centre PPP in the economic context of Fortaleza by acknowledging the importance of demand risks;
  - Actors also understood the influence of fiscal forces in the context when the local government decided to use debts with property tax as an alternative payment format for property expropriation.
2. Concerns with political risks and agreement on the pecuniary payment guarantee arrangement:
  - Actors dealt with insecurities from embedded perceptions that long-term political risks could interfere with the city centre PPP intervention, which reflected the influence of political culture context on actor-relations;
  - Actors engaged in informal discussions and demonstrated capacity to compromise and agree on the format of the pecuniary payment guarantees from the municipality.
  - The local government through the Finance Secretary demonstrated an understanding of the systemic embeddedness of the process in a fiscal context, by

showing concern for the role of control bodies in assessing the impact on the municipal budget of linking pecuniary payment guarantees to net current revenue;

- Both sectors understood the systemic embeddedness of the city centre PPP formulation in a financial context, as well as their interdependence in obtaining private financing for the execution of the city centre intervention; therefore, they were collaborative in the informal meeting with the Brazilian Development Bank (BNDES);
- Actors meeting with BNDES also revealed that the selection of a urban mobility infrastructure scope to be implemented with the PPP instrument was embedded in the systemic financial context. In order for actors to obtain the necessary private financing to make the city centre PPP possible, the policy scope had to be a BNDES priority financing line.

3. Adjustment in the PPP project design after discussion with the mayor for validation:

- The meeting with the mayor for validation showed that actors tried to mobilize the political influence of the mayors' authority in order to accelerate the completion of the PRI pre-tendering process;
- It highlighted actors' capacity to collaborate and compromise on the length of PPP contract term and the informal dynamics involved in formulating a PPP project;
- These negotiations were embedded in a political context as the PPP project design was modified with respect to one of the properties to account for the mayor's political commitment to city centre business owners.

## **9.6 Towards completion of the PRI pre-tendering process**

The involvement of the mayor created the possibility of a legal arrangement based on a less bureaucratic and informal route towards Public Consultation. Meanwhile, private and consultancy actors expected the local government to follow a formal route towards completion of the pre-tendering stage. Even though the informal route accelerated the completion of the PRI pre-tendering process, it led to the publication of a problematic final PPP design. This section will analyze the perception of a formal route and the informal route of interactions that actually led to the completion of the PRI pre-tendering stage and to the publication of the city centre PPP for Public Consultation in June, 2012.

### 9.6.1 Formal legal route: perception of private investors and consultancy actors

According to the interviews, investors and consultancy actors perceived a formal route of interactions based on two aspects:

- Information obtained from the City Centre Secretariat on changes in city centre construction parameters and publication of property compulsory purchase decrees;
- Internal discussions between consultancy technicians, legal advisors from Sao Paulo, directors and private investors regarding formal procedures for publication of PPP projects based on PPP legislations.

#### Information from the City Centre Secretariat

Consultancy actors explained in interview that a few weeks before submission of the final PPP documents to the local government, the City Centre Secretary and her legal advisor reassured that they were in control of the publication of property compulsory purchase decrees and of the adjustment in the legislation changing the construction parameters to 80%. In interview the City Centre Secretary expressed awareness of these aspects and acknowledged they could create insecurity in the private sector. As the following quote shows, she also mentioned that the local government were already negotiating the acquisition of the properties and preparing the decrees:

*We are still in the process of compulsory purchase, we are negotiating with the owners, and we have been preparing the decrees. One of the requirements for the success of this PPP is having the properties, because without the properties there is no PPP (...). So that's one thing that creates legal insecurity in the private sector, and we must minimize that risk.*

The interviews with private actors also show they relied on the Secretary's arguments: "She told us the decrees were ready in her desk, and that the mayor has to sign them to be published in the Municipal Official Diary. She said it was a matter of one week" (private investor 6). They also requested the municipality to publish the compulsory purchase decrees prior to Public Consultation, as the comment ahead illustrates:

*One of the problems faced by the municipality is to determine the properties without publishing the decrees of compulsory purchase. What was recommended was 'Secretary, you must publish the decrees of compulsory purchase before the publication of protocol for Public Consultation' (private investor 7)*

However, on May 30, 2012, the PPP project documents were submitted to the City Centre Secretariat without the publication of the decrees and based on a city centre construction parameter of 80%, when the local urban legislation still stated the 60% and 70%. Although investors were concerned about this legal incoherence, they decided for the re-submission because they were confident that, based on the reassurance given by the City Centre Secretary, these measures would be implemented soon.

#### Formal legal route perceived by consultancy and private actors

Consultancy actors and private investors also expected the local government to follow a formal, legal and bureaucratic route towards Public Consultation. However, they failed to consider the fragility of the formal legal arrangement since the local PPP legislation had only been recently published, and of the organizational arrangement, considering that public sector actors were still learning about PPP procedures. Moreover, they were not aware that the mayor allowed the City Centre Secretary and the Finance Secretary to engage in a less bureaucratic and informal route for completing the PRI pre-tendering process. Even though actors were aware of the legal and organizational fragility of the local arrangements, they still expected the local government to follow a formal route towards Public Consultation. Next, there is a summary of the expected formal route:

1. Private sector submits PPP project documents to the City Centre Secretariat (Sectoral Secretariat).
2. If approved, City Centre Secretariat evaluates and writes official opinion and sends to the PPP Unit and Managing Council for technical evaluation. If not, Secretariat asks private sector for adjustments.
3. PPP Unit and Managing Council evaluate and write official opinion. If approved, they send documents to City Attorney Office for legal evaluation; and if not, return to Sectoral Secretariat.
4. City Attorney General's Office assesses the legality of the procedures, issues its official opinion in favour or not of the publication for Public Consultation. If approved, it returns documents to City Centre Secretariat for publication; if not, the Secretariat evaluates problems and ask private sector for adjustments.
5. If approved, City Centre Secretariat sends documents to PPP Unit to organize arrangements for publication.

According to actors' perception of the formal organizational arrangement in EPISODE 3, the PPP Unit and Managing Council and the City Attorney General's Office were



considered crucial actors for leading the process up to Public Consultation. The roles of the PPP Unit and Managing Council were stated in the Municipal PPP Decree of December 2011 (Decree n. 12886, 2011). Actors' perception of a role for the City Attorney General's Office was based on a common practice in the municipality for traditional pre-tendering procedures, in which the Office was responsible for legally approving or not projects prior to Public Consultation. Traditionally, the City Attorney General's Office performed the role of consultancy and legal advisor in the public sector sphere (Decree n. 9321, 1994; Law n. 006, 1992). This practice influenced private and consultancy actors' expectations that the PRI process of the city centre PPP would follow the traditional municipal pre-tendering routines, based on the participation of the Attorney Generals' Office. The following comments illustrate this:

*The process is basically complete. The part that was under the responsibility of the private sector has been concluded; the technical material has been entirely handed in. Up to where we have information, it was accepted by them. So now it is the internal and bureaucratic procedures of City Attorney's Office so that the process can be legitimized and published (private investor 7).*

Actors also considered that the PPP Unit and Managing Council would have a crucial formal role at this stage based on their roles in the PPP Decree (Decree n. 12886, 2011). They expected the Managing Council to be in charge of approving the documents and authorizing the Public Consultation. Nevertheless, for the city centre PPP, the role of the Managing Council was only in the legislation. The Council was informally represented by the PPP Unit and did not assume an active role in the discussions or validate any of the documents. The following quote demonstrates the non-participation of the members of Managing Council in the city centre PPP:

*The Managing Council has a symbolic role. I think they should have been meeting at least every 2 months in order to know more and to see the PPP project we have been working on. I'm not sure if they know or not, but this dialogue is not a formal meeting of the PPP. They can talk about this when they are together in another meeting and they comment on this subject. But I think their involvement should be specific, even if every 2 months, in order to strengthen this. The story is this, 'If everything works out great; but if it doesn't...' So in reality the Managing Council has a symbolic role (PPP Unit legal specialist).*

Private and consultancy actors disregarded the fragility of the legal and organizational arrangements when they expected the local government to follow a formal route based on traditional legal procedures for PPP publication for Public Consultation. They also expected the municipality to adjust the local urban legislation and to publish the compulsory purchase decrees. However, these aspects did not take place under the informal route that actually led to the completion of the PRI pre-tendering process.

#### **9.6.2 Adjustment in the legal arrangement: informal route adopted by the local government**

Since the legal and organizational arrangements were still under construction, public actors engaged in informal interactions in the final days of the process. The mayor's consent enabled the informal process of approval of the PPP project for publication and permitted public actors to overcome bureaucracies, such as legal administrative procedures, that could delay publication, including perceived difficulties related to the novelty of the PPP theme within the internal structure of the municipal administration.

A common embedded perception among private and consultancy interviewees was that the local government rushed to finalize the procedures prior to municipal elections in the end of 2012. As the following comment by a consultancy director shows, there was an embedded perception among interviewees that fast political return was one of the main reasons politicians supported partnerships with the private sector: *"For politicians, it is great to have private partners, because they have the ability to execute things fast, and within their political time horizon, they are able to give rapid responses"* (technical director). Others expressed similar ideas by showing a concern that the end of the administration term would weaken previously observed *"manifestations of willingness"* or political will from the local government in favour of the city centre PPP intervention.

At this stage, the City Centre Secretary informally interacted with the Finance Secretary, the lawyer of the mayor's cabinet and the City Attorney General, in order to accelerate the publication. For public actors, following the legal procedures of sending documents from one public entity to another for assessment and official opinions would take much longer to reach Public Consultation. They were aware that if a public sector entity requested new modifications in the documents, they would have to be formally returned to the private sector for adjustments, delaying the process even further. A quote from an interviewee from the City Centre Secretariat illustrates this:

*If you send the official request for analysis to a Secretariat that has not been following the process, it might take even longer, because the Secretariat will have to learn about it; and this can take longer. In our Secretariat we were fortunate because the City Centre Secretary had been verbally conducting this with other Secretaries. She was telling that she would be sending it to them, so this made it easier. But I think that if this were to be done formally, sending the material and waiting for a feedback, it could delay. The experience we have from other things, even simpler is that we send it and it doesn't come back. But since this was a very new project and the first attempt to make a PPP, consequently this integration and engagement is crucial for a more effective feedback (legal specialist).*

The Finance Secretary also commented on the importance of actors informally working together for the progress of the PPP formulation. In interview he mentioned the need to overcome bureaucratic delays to the process: *"We had 2 meetings with the mayor and our involvement led to a reduction in the required procedures that were actually unnecessary. (...) If this was supposed to follow the normal formal procedures, it would take much longer. So in the end we will have the judicial security of the process but in a much faster way"*. Public actors believed in the efficiency of the informal interactions for a faster approval of the PPP project and completion of the PRI pre-tendering process.

The PPP Unit was completely discarded as the technical-coordinating unit during the process, even though it still had operational and technical responsibilities according to the formal organizational arrangement introduced by the municipal PPP legislation. The responsibilities of the PPP Unit stated in the PPP Decree included to perform operational activities and coordination of PPPs, as well as to advise the Managing Council; to articulate with other entities and stakeholders in the public sector; and to provide technical support for the preparation of projects and contracts, especially in financial and public procurement aspects (articles 7 and 8, Decree n. 12886, 2011).

However, interviewees from the PPP Unit expressed that they were only contacted after informal decisions had been made on approval for PPP project publication for Public Consultation. The following quote from a PPP Unit interviewee demonstrates that the team was not allowed to evaluate and modify the technical quality of the documents:

*The protocol and the six attachments that compose the studies came back, and the PPP Unit resumed its responsibilities. In fact, it came back already approved, not allowing us to modify anything. There wasn't any official opinion, not from the Finance Secretary as well; there were only the studies. We were simply told that we had to prepare the publications (...), communicating that it would be open for Public Consultation for 30 days. The same day we sent it for publication (PPP Unit legal specialist).*

Before publication for Public Consultation, local government actors failed to assess the legal coherence of the PPP project design. The change in the local urban legislation had not been approved; the compulsory purchase decrees not published; and the private consortium did not submit the value for money document demonstrating the cost-effectiveness and comparative advantage of the city centre PPP intervention. The local government failed to consider these aspects when approving through an informal route the studies for Public Consultation. Despite the problems, the city centre PPP project design was published for the 30-day period of Public Consultation, between June 8 and July 8, 2012. It was also published online, in newspapers of large circulation and in the Municipal Official Diary (Notice of Public Consultation - PPP, 2012). This marked the completion of the case study pre-tendering process based on the Procedure for Request of Interest (PRI) mechanism.

### **9.6.3 Summary of Section**

Private and consultancy actors submitted studies with premises that were inconsistent with the requirements of the PPP legislation. They expected the local government to adjust the legal inconsistencies and to follow a formal route towards Public Consultation. Private and consultancy actors relied on the public sector and did not follow the process closely. They failed to account for the fragility of the local organizational and legal arrangements, which facilitated the conduction of the informal route towards Public Consultation and led to the publication of documents that were legally incoherent. Public actors, in an attempt to avoid delays and bureaucracies, engaged in informal interactions for Public Consultation and approved inconsistent studies. In the end of EPISODE 3, there was no value for money assessment of cost-effectiveness and comparative advantage of the PPP instrument for city centre project. The studies submitted and approved for Public Consultation were not supported by the compulsory purchase decrees of the properties

selected, and the 80% construction parameter used as premise in the policy design was not accompanied by a change in the local urban legislation.

## **9.7 Summary of Chapter**

Based on the descriptive-analysis of EPISODE 3, actors overcame frustrations resulting from the rejection of the PPP project by the local government and by relying on commitment packages. Private investors, some public actors and consultancy coordinators changed their strategic position in the process and promoted a new strategy for the PPP formulation. The ‘learning by doing’ approach was a flexible attempt at constructing and adjusting premises and modifying documents simultaneously. It seemed adequate for the complexity and interdependence of studies required for the formulation of the city centre infrastructure PPP project. However, the fragility of the local organizational and legal arrangements, informal interactions and the attempt to overcome bureaucracies of public administrative procedures influenced the publication of projects that lacked technical quality and presented legal premises that were inconsistent with the contextual regulatory framework. The lack of internal and external control allowed the publication of a deficient PPP project for Public Consultation in June 2012. The summary of this chapter, presented ahead, is organized in terms of the elements of the ‘systemic institutional arrangement’ produced through actors’ interactions in EPISODE 3: policy, legal, organizational and strategic arrangements.

### **9.7.1 Systemic Policy Arrangement:**

In EPISODE 3 of the case study, actors continuously reinforced the priority of the PPP instrument for the urban mobility infrastructure scope of the city centre re-ordering PPP. They relied on political, business and technical commitment packages and renewed their motivation to continue in the informal PRI pre-tendering process despite the frustrations and insecurities from EPISODE 2. Furthermore, with the informal meeting at the Brazilian Development Bank (BNDES), the case study also shows that the prioritization of the scope for the PPP instrument is embedded in a financial context. As suggested by the Brazil PPP Framework, a favourable financial and investment scenario was an influential element in the PPP formulation because after the positive evaluation of the Bank on the PPP project, actors’ obtained new motivations to continue with the pre-tendering process. The opinion of the Bank on the project’s priority was influenced by actors’ engagement in the ‘learning by doing’ strategy, in which they compromised and collaborated to improving

the premises of the PPP project, which influenced confidence of the Bank on the project's feasibility.

### **9.7.2 Systemic Legal Arrangement**

In EPISODE 3, the formal legal arrangement was composed by the Municipal PPP Law published in June 2011 and by the PPP Decree published in December 2011. The legal arrangement was complemented by the local urban legislation, represented by the Municipal Master Plan (Law n. 062, 2009), and by the federal decree-law on property expropriation for public utility (Decree-Law n. 3365, 1941), demonstrating the embeddedness of the process in a regulatory context specific to the case study system. Considering that actors were still learning about the PPP legislation, they continued to informally rely on the office from Sao Paulo, which now had a local representative. The presence of the local lawyer facilitated the simultaneous adjustment in documents as premises were modified during the 'learning by doing' interactions, but it failed to reinforce the alterations in the local urban legislation and the need for publication of compulsory purchase decrees of properties. The informal arrangement changed after submission of the PPP project design in May 2012. Although Municipal PPP Law and Decree provided information on formal procedures for the entities in the local administration to assess the legality, coherence and quality of the PPP documents, the local administration followed an informal process towards Public Consultation. This was influenced by the fragility of the local legal and organizational arrangements, but also by their attempt to overcome embedded perceptions that bureaucratic procedures would extend the completion of the pre-tendering process. The informal route waved official evaluations and led to the publication of a legally incoherent PPP project for Public Consultation.

The publication of the project complied with the following formal rules and procedures set by the PPP legislation and other regulations in Brazil:

- Fiscal responsibility was met through the selection of guarantee type not linked to net current income (article 8, federal PPP law and municipal PPP law)
- Transparency and social accountability requirements were met with publication of project for Public Consultation through online media, in newspapers of large circulation and in Municipal Official Diary (article 10, federal PPP law and municipal PPP law)

However, the publication of the final PPP project did not comply with:

- Fiscal responsibility: it did not demonstrate official adequacy of municipal pecuniary payment commitment with annual and multiannual fiscal and budget plans, as well as its compatibility with federal law of budgetary directives and with the law of annual budget.
- Financial accountability: there was no value for money document based on the allocation of risks between parties and demonstrating the cost-effectiveness and comparative advantage of the PPP with respect to other policy tools (i.e. traditional procurement and common concession).
- Legal and regulatory accountability: the PPP project design was published based on 80% construction parameter different from the rates of the local urban legislation and based on properties that were not owned by the municipality since the compulsory purchase decrees were not published.

### **9.7.3 Systemic Organizational Arrangement**

The adjustment of the organizational arrangement in EPISODE 3 was based on the coordination from public, private and consultancy actors over the 'learning by doing' strategy. Actors acknowledged the problems with EPISODE 2 and did not translate those understandings into a rigid structure of interactions involving, for example, contractual and legal rules to secure actors' behaviour in expected ways. Instead, they preferred to rely on flexible 'strategic coordinating capacity' of actors they identified to possess the appropriate skills to guide the process (Healey, 2004). However, after submission of the completed PPP design to the public sector in May 2012, coordination from private and consultancy actors was missing. Even though in EPISODE 3 public actors coordinated discussions and decisions over technical premises, the submitted city centre PPP project did not go through an internal process of control, final assessment and validation. Although there were formal organizational and legal arrangements in place, their introduction was not followed by a simultaneous cultural adjustment in the local context. The rules existed, but actors in the local government were not familiar with them. Moreover, after submission, private and consultancy actors completely relied on the coordination and control of the local government over the process and for securing the legality of the procedures with respect to PPP rules and other regulations. However, although the formal arrangement implied hierarchy and control, there was no coordination from the public sector in order to oversee

the legality of the procedures during the informal route towards Public Consultation, which compromised the overall coherence of the PPP design authorized for publication. The publication of the final PPP project evidenced the following fragile aspects in the systemic organizational arrangement:

- Lack of coordination from private actors over the process towards the end of the pre-tendering stage;
- Lack of external control;
- Lack of internal control:
  - Inactivity of the PPP Unit as coordinator although it has a legally determined role;
  - Absence of official technical evaluation and formal authorization from Managing Council (article 4, PPP Decree; article 10, municipal PPP law);
  - Absence of official fiscal and financial evaluation from the Finance Secretary as ‘ expenditures authorizer ’ (article 10, federal and municipal PPP laws);
  - Absence of official legal evaluation from City Attorney General’s Office as internal legal control body

#### **9.7.4 Systemic Strategic Arrangement**

In the case study, actors used a new strategic arrangement based on a ‘learning by doing’ approach guided by coordination. This replaced the embeddedness of a mentality in which the role of the public sector was one of ex post validation only. In EPISODE 3, premise definition and document elaboration and adjustments happened at the same time. Therefore, through the more flexible strategy actors also replaced the rigid instrumental plan and overcame insecurities and frustrations with respect to the rejection of the PPP design by the local government at the end of EPISODE 2. In the case study, actors also dealt with the systemic embeddedness of their interactions and strategy in a broader fiscal, financial and economic context, which was not acknowledged in the previous Episode. At this stage, they were able to adjust premises and documents as decisions were influenced by contextual factors. Moreover, they again handled the perceived influence of political culture, in terms of embedded perceptions of long-term political risks; but failed to correct incorrect premises that had been defined through the strategy of ‘political consensus building’. In EPISODE 3, the embeddedness of external forces in context was revealed through the following aspects:



- Economic: acknowledgement of demand risks related to parking and commercial centre service provision;
- Fiscal: public actors' adoption of alternative involving property tax debt resettlement in order to remove property acquisition costs from pecuniary payment formula; and local government rejection of pecuniary payment guarantee link to net current income for accountability concern with control bodies;
- Financial: meeting with the Brazilian Development Bank for discussions over financing conditions;
- Political culture:
  - Discussions over pecuniary payment guarantee influenced by embedded insecurities with long term public sector commitment (i.e. short term vision of mayors and governors and the lack of continuity of public policies over different administration terms);
  - Adjustment in the properties for the project after mayor's request because of local government's commitment to local interest groups.

The descriptive-analysis of the case study in three Episodes of actors' interactions provided an exploratory overview of the dynamics of actor-relations in the pre-tendering formulation of infrastructure PPP projects. It was aimed at providing an in-depth understanding of the workings of interactions in the pre-tendering stage, which has been under explored in the Brazilian context. The next chapter will provide an overall summary of the Episodes addressing the research question on how actors were able to socially construct and continuously adjust the 'systemic institutional arrangement' that led them towards completion of the PRI pre-tendering process. It will also highlight the weaknesses and strengths of the process and draw lessons from the descriptive-analysis of the Episodes. Reflections on implications to policy and practice in order to inform recommendations will also be considered in the next chapter.

## Chapter 10 - Conclusion

The principal aim of this research was to understand why many cases in Brazil are not finishing the pre-tendering stage of PPP project formulation based on the Procedure for Request of Interest (PRI). More specifically, this research attempted to unpack the workings of actor-relations at this stage in order to obtain lessons and contribute with a better understanding of PRI pre-tendering processes of PPP formulation in Brazil. While the previous three chapters of analysis were used to explore actor-relations in the formulation of an infrastructure PPP project that completed the pre-tendering stage, this chapter will present a summary of the findings and reflections on the wider implications of the lessons learned from this research. This concluding chapter first presents a summary of the research findings and lessons learned, followed by answers to the research questions, reflections on the research process, as well as new questions and future directions for the research and policy/practice communities.

### 10.1 Summary of findings

Based on the study undertaken, there are signs indicating problems with the Brazil PPP Framework. The findings of this research indicate that the Framework may not have been successful in delivering completion of many PRI cases due, in large part, to problems with its basic underlying assumptions about how the process of PPP formulation works and the elements that influence actors in their relations in the pre-tendering stage. To this date, the focus has been on a structural approach to the formulation of these projects, neglecting the complexities and intrinsic elements of the process.

The findings from this research indicate that two elements of the socially constructed 'systemic institutional arrangement' were useful in leading actors towards completion of the PRI pre-tendering stage of PPP formulation: policy arrangement and strategic arrangement. From these elements, important lessons can be learned for the formulation of PPP projects especially considering aspects that have been neglected by the Brazil PPP Framework. On the other hand, the other two elements, legal and organizational arrangements, emphasize aspects of the Framework that are important for the PRI pre-tendering process of PPP formulation, but which must be taken into consideration from a contextual perspective of the system in which the PPP formulation process takes place.

The study demonstrates that process matters and that context is an influential element in pre-tendering PPP formulations, both internally in the dynamics of formal and informal interactions and through the influence of external forces embedded in the 'systemic institutional arrangement'. These elements, however, have been neglected as influential in the wider Brazilian context of PPP formulation based on the PRI mechanism. In the analysis of the case study used as research strategy, recurrent themes related to process included: informal interactions matter, soft capacity elements matter (i.e. overcoming frustrations and insecurities, collaboration, compromise, motivation and commitment), context matters, flexibility in the strategy matters, but coordination and control over procedures also matter and are needed to assure responsibility and accountability in the long-run.

Considering these findings, this research indicates that an essential element for PPP project formulation is recognition of process complexity and of the contextual embeddedness of actor-relations in PRI pre-tendering arrangements. This research adopted a novel analytical perspective on the PPP theme and stimulated initial discussions over process-related elements in the formulation of PPP projects; and, from the findings, it demonstrates that acknowledging the role of process is relevant for the formulation of PPP projects, which in the field of policy analysis in Brazil is often placed in the background.

It is important to reinforce at this point an observation about the contextuality of the case study, which was already mentioned in Chapter 6 (Research Strategy and Methods) regarding issues of transferability. The particularities of the case study context are used to highlight and exemplify the importance of acknowledging that process and context play a role in the formulation of PPP projects. This research does not attempt to transfer to other cases of pre-tendering PPP formulation in Brazil the intertwining contextual processes that linked actors together in the case study. These were used as evidence of the relevance of process and context for pre-tendering arrangements, which have not been generally acknowledged with respect to PPP formulation in Brazil. Thus, the lessons learned from the case study and their wider implications to other cases in Brazil are related to shedding light on the importance of context and process for such arrangements, which share similar characteristics across Brazil (in terms of set of public, private and technical actors, project finance elements, complexity of interactions, legislative and administrative procedures).

The case study suggests that process-related elements such as context, strategy and formal and informal elements of actor-relations play a role in PRI pre-tendering

arrangements. However, unravelling and managing the complexity of intertwining and socially constructed processes must be done on a case-by-case basis. Based on these observations, the findings from this research represent an initial stepping stone to stimulate stakeholders, policy-makers and practitioners to acknowledge the relevance of process-related aspects and not to rely uncritically on structurally oriented or one-fits-all approaches for the formulation of PPP projects. This research was groundbreaking in stimulating the reflection of stakeholders involved in the case study on issues related to process, but more attempts are still needed to raise wider awareness in Brazil on the relevance of a process approach to PPP formulation.

## **10.2 Research Question 1: Summary of case study**

**Research Question 1: How did actors' construct and enact a 'systemic institutional arrangement' through their relations? How did it influence actors in the completion of the PPP formulation process in the PRI pre-tendering stage?**

The answer to this question will provide a summary of the case. It provides contextual evidence from the study to highlight the importance of process, context and socially constructed elements for the pre-tendering formulation of PPP projects. In this section, sub-questions will be simultaneously addressed per element of the 'systemic institutional arrangement' that was continuously constructed and enacted during the EPISODES of the case study that completed the PRI pre-tendering process of PPP formulation. The elements are policy, legal, organizational and strategic arrangements. The sub-questions proposed in Chapter 5 (Conceptual Framework) are the following:

- How were actors and their relations influenced by existing 'ways of thinking and acting'? How did they mobilize or overcome existing ways?
- How were actors and their relations influenced by innovative 'ways of thinking and acting'?
- How did actors and their relations influence the process?
- How did external forces influence the process?

### **10.2.1 Policy Arrangement**

The PPP Framework that has been used to guide many PRI cases of PPP formulation in Brazil assumes that ex ante prioritization of the PPP instrument for specific policy sectors through political, financial, regulatory and other external stimulus are sufficient to lead pre-tendering processes towards completion. On the other hand, the case study analysed in

this research shows that other elements are also influential in the prioritization of the scope and PPP instrument by the actors involved in the process of project formulation.

In the case study, prior to engagement in Episode 1, there was no clear infrastructure scope indicated for PPP instruments; PPPs were not even a priority in the public sector agenda. From the analysis of the case study used as part of the research strategy, four elements were important in actors' construction and enactment of the 'systemic policy arrangement'. These elements were:

- Social construction of scope and selection of the instrument (EPISODE 1)
- Contextual embeddedness of political culture (EPISODE 2)
- 'Commitment packages' and soft capacity elements (EPISODE 1 through EPISODE 3)
- Contextual embeddedness of financial, fiscal and economic forces (EPISODE 1 through EPISODE 3)

## **EPISODE 1**

### Social construction of scope and selection of the instrument

The case study shows that actors overcame the fact that PPPs had not been prioritized as a policy instrument in the public sector agenda by mobilizing and overcoming embedded perceptions and developing new 'ways of thinking and acting' in their interactions. To conciliate interests on the infrastructure scope for the city centre intervention, actors mobilized existing perceptions that the local government lacked resources and capacity to implement projects in Brazil. They also mobilized perceptions that the private sectors depended on the public sector interest and political will in order to invest in a business opportunity that had political and policy relevance to the government, that is, the public sector had to 'buy the idea'. Both sectors also understood that their interests were priority areas for infrastructure development, considering the problematic urban mobility context of the city centre and pressures from society, media and control bodies. Therefore, actors' knowledge about complementary interests, awareness of interdependence, and relevance of the intervention for the city centre were mobilized in the informal interactions between public and private actors that led to conciliation of interests and definition of the infrastructure scope for the city centre intervention. Public and private actors also overcame several pre-existing insecurities related to lack of experience and knowledge in public-private relations for the selection of the PPP instrument. This was complemented by their embedded knowledge of difficulties to

implement the same scope of the intervention via other alternatives, the traditional tendering process (8666 Law) or the common concessions instrument (8987 law).

## **EPISODE 2**

### Contextual embeddedness of political culture

In order to overcome embedded perceptions that external opposition, distrust and suspicion against public-private relations could negatively affect their systemic context, actors engaged in a communication process of 'political consensus building' to develop support for the city centre infrastructure scope and the PPP instrument. Perceived sources of resistance included: councillors, secretaries, civil servants and control bodies; as well as actors in society such as representatives of the media, the local community, street vendors, city centre business owners, and owners of irregular parking lots. Their mobilization for political consensus building demonstrated commitment to prioritize the scope and instrument not only internally, but also externally with society and the public sector through political strategies of communication and also through political decisions on technical premises for the PPP project design. In EPISODE 2, actors' embedded perceptions of political, cultural and judicial obstacles for the publication of the city centre PPP project influenced their commitment to the process and the technical decisions of project, but detracted attention from the quality of the PPP project.

## **EPISODE 1 through EPISODE 3**

### Continuous reinforcement of 'commitment packages' and soft capacity elements

The case study shows a continuous process of commitment building during the PRI pre-tendering stage in order to maintain the initial priority given to the PPP instrument and to the infrastructure scope. This prevented the interactions from falling apart despite problems faced in the process. In EPISODE 1, private investors and public sector actors overcame several pre-existing insecurities and also built expectations for the PPP preparation process. However, actors' expectations were frustrated during EPISODE 2, especially because of the problems with the enactment of the instrumental strategy and because of the quality of the material submitted to the local government. Some of the insecurities were dealt with in EPISODE 2 through collaboration and participation under the 'emergent strategy' and in the interactions for 'political consensus building'. The initiative of technical actors directly contacting the public and private actors and their involvement in the discussions also helped to overcome some of the initial frustrations and to build a

perception of process ownership. Political decision-making in the studies was used as engine to keep actors committed to the mobilization. In EPISODE 3, actors continuously reinforced the priority of the PPP instrument by relying on political, business and technical commitment packages and renewed their motivation to continue in the informal PRI pre-tendering process despite the frustrations, insecurities and problems from EPISODE 2.

#### Contextual embeddedness of fiscal, economic and financial forces

The policy arrangement was embedded in a fiscal, economic and financial context that enabled the PRI pre-tendering process and motivated actors in the process. Actors took advantage of this embeddedness in the process of PPP formulation.

- Fiscal embeddedness: public and private actors' awareness and mobilization of perceptions that the local government lacked resources to implement the urban mobility city centre PPP demonstrates the embeddedness of the 'systemic policy arrangement' in a fiscal context.
- Economic embeddedness: public and private actors' awareness and mobilization of perceptions that the investment in parking lots in the city centre was a profitable business opportunity demonstrates the embeddedness of the 'systemic policy arrangement' in the economic context.
- Financial embeddedness: the informal meeting at the Brazilian Development Bank (BNDES) demonstrates that the prioritization of the city centre PPP scope was embedded in a financial context, because actors depended on the Bank to prioritize the infrastructure scope of the project in order to secure investment resources for the execution of the city centre re-ordering policy.

#### **10.2.2 Legal Arrangement**

The Brazil PPP Framework indicates that clear PPP laws and decrees setting legal boundaries, conditions and standard procedures for PPP formulation are requirements for the engagement and completion of the PRI pre-tendering stage. However, the initial case study scenario was characterized by the absence of PPP legislations (no municipal PPP law or PPP decrees) to orient actors prior to their engagement in the process. They were published later on but not followed by a simultaneous cultural adjustment in the local context. However, the absence of these elements was not an impediment for actors' continuity in the pre-tendering process.

The case study shows that if a policy instrument is set as priority, actors can be so committed and interested in the process that the fragility of the legal arrangement may not represent an obstacle for actors' interactions. They can even ignore the importance of process embeddedness in a regulatory context, especially considering the neglect of the urban development limits of the Municipal Master Plan (Law n. 062, 2009), and the failure to reinforce the need for publication of compulsory purchase decrees of properties (Decree-Law n. 3365, 1941). Even though the fragility of the legal arrangement did not prevent actors from engaging in and completing the PRI pre-tendering process, it compromised the quality and legal coherence of the PPP project published for Public Consultation. Towards the end of the EPISODE, in the attempt to overcome embedded perceptions of bureaucratic procedures for publication of PPP project, public actors neglected legal PPP procedures and formal routes for project publication. They engaged in informal interactions and published a city centre PPP project for Public Consultation that did not meet fiscal responsibility requirements and financial and legal accountability.

### **10.2.3 Organizational Arrangement**

The Brazil PPP Framework indicates that organizations of internal control created by PPP Decrees and represented by Managing Councils and PPP Units must be in place to guide PRI processes of PPP formulation towards completion of the pre-tendering stage. On the other hand, when actors engaged in the pre-tendering stage, there was no formal PPP Decree establishing the roles of the PPP Unit and the PPP Managing Council, and public and private actors lacked experience, training and knowledge in PPP procedures. However, the fragility of the local organizational framework, in terms of public and private organizational and human capacity, was not an impediment for actors' decision to continue with the formulation of the city centre PPP project. It did not prevent actors from staying committed during the pre-tendering PRI process of PPP formulation; however, the lack of appropriate coordination and control influenced problems in the final documents.

In order to overcome lack of experience, insecurities and fragility of local public sector organizational arrangement, actors relied on the perceived experience of local consultancy for coordination. The consultancy promoted trainings and seminars, adopting embedded practices from the state government, for levelling the knowledge of public, private and technical actors on legal and instrumental procedures for PPP project formulation. However, during the pre-tendering process there was no active coordination



from any group, which allowed political decision making to take over and the production of products that lacked integration and technical consistency.

Despite frustrations with the problems in EPISODE 2 and with the rejection of the studies by the local government, actors continued in the process and adopted another coordination posture. They were influenced by 'commitment packages'; public, private and consultancy took over as coordinators and acted as institutional entrepreneurs in implementing the flexible 'learning by doing' strategy. However, there was no overall coordination to control and assess contextual influences on the legal documents and technical studies and the premises defined in EPISODE 2 based on political decision-making remained. In the end of the process, there was no coordination from private and consultancy actors or internal and external public control bodies to oversee the informal procedures leading to completion of PRI pre-tendering stage and to Public Consultation. These were adopted to overcome embedded perceptions of bureaucratic procedures, but led to the publication of projects without assessment and validation of fiscal, financial and legal requirements.

#### **10.2.4 Strategic Arrangement**

As the case study shows, in a scenario of lack of experience and knowledge about strategies for the pre-tendering formulation of PPP projects, actors adopted an approach that they considered appropriate and suitable based on the perceived successful experience of the state government with the football stadium. They initially adopted an instrumental strategy based on an ex ante approach that was inadequate for the complexity involved in formulating a PPP project and which was replaced by a more flexible 'learning by doing' initiative.

##### **EPISODE 1: Instrumental strategy**

The mainstream guidelines obtained from the state government were in line with the approach of the Brazil PPP Framework based on an instrumental strategy set in PRI decrees and manuals of best practices detailing strategic guidelines, activities budgets, timeframes and objectives. The approach disregarded the complex characteristics of PPP formulation based on network of interdependent actors (project finance' concept) and on dynamic interactions. It also neglected the possibility of contextual particularities influencing the process.

## **EPISODE 2: Emergent strategy**

In the absence of coordination in EPISODE 2, groups of interactions engaged in a political process of project formulation through collaboration, initiative, and network-relations for definition of technical premises and project specifications through 'political consensus building'. Under the new strategy actors were able to collect information and define specifications for the elaboration of the city centre PPP. Project premises were constructed as actors interacted in the process. This is in contradiction with the instrumental strategic assumption that project specifications and details and plan activities can be defined *ex ante* and implemented in accordance with a rigid formal plan without need for adjustments. In EPISODE 2, actors engaged in a politically contextualized scenario. At this stage, besides lack of knowledge and experience and coordination problems, actors' political mobilization to define technical specifications and to prevent judicial, political and cultural obstacles in order to overcome their insecurities demonstrates the embeddedness of the process in a local context of political culture. This contributed to complexity and prevented an instrumental strategy from controlling the process. On the other hand, the emergent strategy was based on non-integrated decisions, lack of coordination and validation with public actors, as well as neglect for context and complexity. The political mobilization was technically useful in bringing the network of actors together and in inspiring commitment; but the focus was placed on preventing perceived resistance and not on the quality, integration and coherence of documents. The contextual nature of the new strategy, without guided leadership and coordination, compromised the quality of the PPP project submitted at the end of EPISODE 2, but did not derail the pre-tendering process. Despite the problems, actors used soft capacity elements during the EPISODE, such as collaboration, initiative and commitment, to define technical premises and to keep the process going forward.

## **EPISODE 3: 'Learning by doing' strategy**

After the local government rejected the studies, actors used a new strategic arrangement based on a 'learning by doing' approach guided by coordination from private and public actors and consultancy directors. In the public sector, the role of the City Centre and Finance Secretaries was essential at this stage. Actors engaged in informal interactions in which premise definition and document elaboration and adjustments happened at the same time. This new strategy had a more flexible deadline as actors acknowledged the difficulties involved in the formulation of complex PPP projects and as coordinators

validated major decisions throughout the process. Through the more flexible strategy, actors replaced the rigidity of the instrumental plan and overcame insecurities and frustrations with respect to the rejection of the PPP design by the local government. This strategy demonstrated that a guided but flexible and contextualized approach was better suited for the process. Moreover, during enactment of the 'learning by doing' strategy through informal interactions, it became clear the embeddedness of the process in a financial, fiscal, economic and political cultural context, which influenced decisions and readjustments in the PPP documents.

### **10.3 Research Question 2: Reflections on wider implications (lessons learned)**

**Research Question 2: What are the lessons learned for the formulation of infrastructure PPP projects in Brazil in the PRI pre-tendering stage?**

The answer to this question will consider the wider implications of this research. Three topics of general implications will be considered in this section: the relevance of context, process implications for policy-making and for practice. This discussion will consider simultaneously the two sub questions proposed in Chapter 5 (Conceptual Framework), which are:

- What are important aspects that have been neglected by the Brazil PPP Framework?
- What are important aspects about the Brazil PPP Framework that were neglected in the process? Why? How could they be better acknowledged in the process?

In Brazil the intertwining processes that link actors together at the pre-tendering stage have been overlooked by the mainstream structural approach to PPP formulation. The answers to the research question in this section about the lessons learned from this research will raise attention of policy makers and practitioners to the importance of adopting process-lenses to orient arrangements of PPP project formulation. In answering this research question, elements of process and context of the case study will be used to demonstrate that stakeholders in the case were capable of reflecting on a set of issues that brought process and context to the foreground as influential elements. Thus, evidence from the case will be used to exemplify the importance of socially constructed aspects in the PRI pre-tendering stage. The considerations in this section are not an attempt to directly transfer contextual evidence from the study to other cases at the federal, state or

municipal levels in Brazil. The applicability of particular evidence from the case study in other contexts can be verified by future empirical research, which must then acknowledge that elements of process and contextual embeddedness play an important role in PRI pre-tendering arrangements.

### **10.3.1 General implications: context matters**

Despite the existence of a PPP Framework for PPP project design in several PRI cases in Brazil, the case study indicates that contingencies and the intrinsic characteristics of PRI pre-tendering processes are also sources of complexity, which may influence the progress of formulating PPP projects through the Procedure for Request of Interest (PRI). The PRI pre-tendering process reflects a complex web of interactions in direct contact with its context, which cannot be simply organized based on a framework externally imposed on actor-relations in the process. Despite the fact that several states and municipalities in Brazil have faced difficulties to complete pre-tendering arrangements, suggestions and solutions for the PRI mechanism have frequently focused on the structuring conditions for these processes, but overlooked the intrinsic complexities of the pre-tendering stage itself and the influence of context.

The case study suggests that the PRI process can be influenced by the dynamics that unravel during the pre-tendering stage. These dynamics may enable or not the creation of the appropriate circumstances for the progress and completion of the pre-tendering PPP formulation, despite the existence of a structuring Framework. The complexity and dynamics of PRI process are influenced by internal aspects embedded in the pre-tendering arrangements (actors, perceptions, expectations and opinions, soft and informal capacity elements, interdependencies, networks) and by contextual aspects (time and space). They are also influenced by the external environment (financial, fiscal, economic, regulatory, organizational aspects), which are similar to the elements of the Brazil PPP Framework discussed in Chapter 2; but the external influence occurs through its embeddedness in the specific context of pre-tendering formulation. The relation between all of these aspects is important for the creation of conditions for the progress and completion of PRI pre-tendering arrangements.

The interplay between the aspects drawn from the case study, mentioned in the previous section, is context specific. The way these process elements will become evident in other experiences in Brazil depends on contextual specificities of time and space.

However, across Brazil these PRI pre-tendering arrangements involve similar PPP and tendering legislations and procedures, as well as complex interactions due to the large number of actors involved and to project finance characteristics. Consequently, as the contribution from the case study suggests, it is worth reflecting on the influence of process. In the next sections, contextual evidence from the case study will be used to call the attention of policy-makers and practitioners to the importance of a process-oriented approach to the formulation of infrastructure PPP projects in Brazil.

### **10.3.2 General implications of process for policy-making**

The general implications for policy making will consider the lessons learned from the case study with respect to the policy, legal and organizational elements of the Brazil PPP Framework.

#### Policy framework

The Brazil PPP Framework assumes that PPPs must be prioritized ex ante and matched as policy instrument with infrastructure scopes based on previously expressed political will, regulatory, economic and policy stimulus, in favour of specific sectors of infrastructure development. However, as continuously mentioned in this chapter, the study revealed important aspects that are neglected by the Framework, which demonstrate the importance of stimulating reflection on process and context for PPP project formulation in the PRI pre-tendering stage. Examples include the possibility of social construction of infrastructure scope and for selection of PPP instrument; the role of soft elements; continuous use of 'commitment packages'; and contextual embeddedness of external forces in terms of fiscal, financial, economic aspects, as well as political culture. All of these elements were revealed as continuous influence on the prioritization of the scope, instrument, as well as an influence on actors' commitment to the informal and non-legally binding pre-tendering stage.

The case study shows that actors are capable of constructing the infrastructure scope for a PPP project in innovative ways, which can even increase the utility of the instrument for infrastructure development in sectors and areas not anticipated by the government. Different from the external and structural assumptions of the Brazil PPP Framework, the case study shows that the contextual mobilization of favourable environment circumstances can be strongly influential for the prioritization of the PPP instrument.

Furthermore, based on the analysis, another aspect highlights the importance of process and context: the prioritization of the scope can be done with participation from both sectors. The public sector does not necessarily have to be the one to determine what the priority is and define the circumstances. In the case study, the participation and interaction with the private sector was important for the public sector to understand and reflect that the private sector priority on parking mobility was also in the interest of the city and of the local government. In general, this is an important aspect because the scopes of PPP projects often need to be composed of elements that represent priority for both sectors in order to attract private actors for the formulation and execution of such projects and to stimulate priority of instrument and scope in the public sector agenda. Moreover, joint construction of scope can also be relevant for continuous motivation of public and private actors in the process using as engine actors' commitment to their own interests in the scope, as well as perception of commitment from each other.

The case study also shows that actors may need to constantly overcome embedded and new obstacles to the prioritization that arise throughout the process of PPP formulation. This may involve continuous reaffirmation and reassessment on whether the PPP instrument is appropriate for the policy scope. As an example from the case study, if actors perceive contextual resistance, they may engage in a process of continuous internal and external reassurance that the PPP instrument is priority in order to maintain commitment and confidence in the process. Therefore, the Brazil PPP Framework must account for the need of a continuous check on the prioritization of the PPP instrument and on keeping actors constantly motivated in the pre-tendering stage, or negotiations may fall apart considering the non-legally binding character of these informal pre-tendering interactions. However, it is necessary to attend to the fact that the continuous process or reaffirmation does not detract attention from the quality and technical consistency of the project being produced, even if it helps to keep actors committed. For example, in EPISODE 2 of the case study, the perception of process ownership through engagement in 'political consensus building' helped to keep actors committed, but compromised the technical quality and legal coherence of the PPP project design. Even though it may inspire motivation, this way of working may also run the risk of reducing the PPP formulation to a pure political process (Albrechts, 2003b). Therefore, policy-makers need to pay attention to the lack of considerations over these aspects by the Brazil PPP Framework currently guiding the formulation of PPP projects based on the PRI mechanism.

The same way that politics and informality influenced and supported actors in the case study towards completion of the pre-tendering process, it can also represent an obstacle to interaction in that stage, depending on the context in which the process takes place. It is important to mention that if PRI cases in Brazil have failed mostly because they were unable to control the negative influence of politics or other contextual elements, actors and society might have avoided problems for the future and are in fact better off with the cancelation of these processes. For the cases that are struggling but hanging on in the pre-tendering process and for the cases yet to come, the findings from this research can shed light on elements that may help to improve the PPP formulation and prevent future headaches resulting from inadequacies, dismissals and lack of scrutiny during the pre-tendering stage, especially with respect to socially constructed aspects and elements of process. In the case study, these were related to the 'obfuscation of the political' (Allmendinger & Haughton, 2012, p. 98) when actors try to deceive or escape from considering the influence of politics, and the neglect for or displacement of 'democratic accountability', which in the context of Brazil may represent avoiding legislative intentions and instructions of financial, fiscal and social responsibility (Allmendinger & Haughton, 2012, p. 91; Demir & Nyhan, 2008, p. 83; Haughton & Allmendinger, 2008, p. 145).

#### Legal and organizational frameworks

The case study indicates that the suggestions of the Brazil Framework for PPP formulation in terms of well-established organizational and legal frameworks to control and guide the pre-tendering arrangements are useful, but in need of complementation considering its neglect for the role of process. The Framework indicates that clear PPP laws and decrees setting legal boundaries and conditions and standard procedures for PPP formulation are important for the engagement and completion of the PRI pre-tendering stage. The Framework enforces the necessity of organizational frameworks in place, generally created by PPP Decrees and represented by the internal control from Managing Councils (or Committees) and PPP Units (or Technical Groups), but also by external bodies of control.

However, it is necessary to add to the Framework that actors involved in PPP formulation arrangements must have the knowledge that process matters and be convinced of the importance of reflecting on socially constructed aspects during the pre-tendering stage of PPP formulation, as well as on its contextual embeddedness. In the case study, actors did not reflect on the need to stimulate among stakeholders involved in the

system concerns over accountability and control, which could be preventive of future problems for the PPP project implementation. Thus, a PPP project with problems reached Public Consultation, especially considering that the formulation process was negatively influenced by actors' lack of knowledge in PPP legal procedures and requirements, by its embeddedness in a political context and by perceptions of bureaucracies in the procedures of the public administration. Actors were able to implement a local PPP legislation and formally and symbolically create an organizational arrangement, but their implementation in the system was not followed by a simultaneous local cultural adjustment. The rules and organizations formally existed, but actors were not familiar with them.

In the study, internalization of legal procedures and a stronger supervision from internal and external control bodies were missing to assure fiscal, financial and legal accountability of the project. In addition to that, informal interactions helped to compromise the legality of the published city centre project. Therefore, the Brazil PPP Framework needs to account for the fact that informal relations may play a crucial role. It must also consider the importance of contextual dynamics and not simply assume that if roles and responsibilities are formally assigned, actors will be able to embody them in practice. Moreover, the case study specifically shows that knowledge on legislations and their appropriateness to the specific context is essential for preventing problems in the design of PPP projects, but also that it is essential the continuous participation of (public and private) internal control and external control bodies during the process. It highlights the contextual embeddedness of legal and regulatory aspects. The Brazil PPP Framework must also acknowledge this because it does not emphasize that other legislations in the Brazilian regulatory framework may also be applicable to specific cases. Formal structures may be important but are not sufficient to secure meaningful or consistent political behaviour for the formulation of coherent and responsible PPP projects (Lowndes and Leach, 2004), because the following of public administrative procedures are not autonomous, neutral and free from politics, informality, and contextual actor-relations (Demir & Nyhan, 2008).

The legal and organizational aspects suggested by the Brazil PPP Framework are important, but must be taken into consideration from a contextual perspective of the systemic actor-relations in which the PPP formulation process takes place. The case study presents evidence worth considering which demonstrates the relevance of process to actors' engagement in PRI pre-tendering PPP formulation:



- Legal aspects: the case study shows that internal knowledge about legislation and procedures are important, but also the development of motivation to apply them in practice during the processes of interaction;
- Organizational aspects: public and private actors in the case failed to exercise control for 'legislative oversight', which is important because embeddedness in political context can be influential and compromise conformity with legislative instructions (Demir & Nyhan, 2008).

Although the case study completed the PRI pre-tendering stage and actors published the PPP project design for Public Consultation, the lack of fiscal and legal accountability and the absence of a 'value for money' document were significant gaps left from the city centre PPP formulation. Considering that it was in the initial interest of public and private actors to engage in an official tendering process for future implementation of the city centre PPP project, lack of concern for fiscal, legal and financial accountability was a strong indication that the successful implementation of such project could be compromised. Therefore, they lacked 'democratic accountability', in terms of a project design in conformity with legislative intentions and instructions (Demir & Nyhan, 2008, p. 83). Public and private actors also lacked 'planning ability', that is, the capacity to translate the initial city centre policy idea of urban mobility infrastructure into a PPP project design that was adequate for an official tendering process and for implementation (Demir & Nyhan, 2008, p. 83). In an attempt to reach Public Consultation, to overcome bureaucratic procedures with the endorsement of the mayor and – in the perspective of private and consultancy actors – politically influenced by coming elections, the municipality did not officially demonstrate its capacity to fulfil pecuniary payment obligations, in accordance with annual and multiannual fiscal and budget plans. It also failed to demonstrate compatibility of the fiscal commitment with the federal law of budgetary directives and with the law of annual budget (*lei de diretrizes orçamentárias* and *lei orçamentária anual*). This was fiscally irresponsible considering the 20-year commitment of public resources with the PPP project in case it reached official tendering process and contract signature. The absence of demonstration of the fiscal capacity of the municipality was also not in the general interest of the private sector because a municipal fiscal incapacity could lead to default on pecuniary payment and financially compromise the project and the business profit to be earned from the intervention.

Furthermore, there was no legal accountability and concern for the process embeddedness in a regulatory framework that went beyond PPP legislations. The PPP project design was published based on 80% construction parameter different from the rates of the local urban legislation and based on properties that were not owned by the municipality since the compulsory purchase decrees were not published. The informality of the process left legal gaps that could impede the actual execution of the PPP project and implementation of the urban mobility infrastructure intervention in the city centre.

Finally, there was the absence of a financial accountability document demonstrating the 'value for money' of the intervention. Actors were not able to demonstrate that the PPP instrument was the most appropriate tool for the infrastructure scope. This shows the lack of public sector concern in guiding or requesting its elaboration even though interviewees expressed constant concern over municipal budgetary constraints. Actors did not fulfil a legal requirement and failed to demonstrate the cost-effectiveness of the project in terms of public resources and the comparative advantage of the PPP for the city centre project in comparison to other alternatives available (traditional tendering and common concession).

The case study shows that actors engaged in informal and political relations for the progress of the PPP formulation. Political decision-making and guidance compromised 'democratic accountability' and 'planning ability' of actor-relations in the PRI pre-tendering stage. Therefore, as lessons and implications to policy, it is important to consider that many forces, internal or external, may influence the dynamics of actor-relations and lead to diverse results, positive or negative. These dynamics may be subject to political, economic, and other external determinants; but internal human deliberation and political struggles may also lead to modifications in the practical application of bureaucratic and legal procedures (Olsen, 2006). In the case study, actors took advantage of their relations and financial, fiscal, economic embeddedness for positive definition of technical premises (i.e. construction of policy scope, meeting at BNDES and veto on link between pecuniary payment guarantees and net current revenue). However, they also used this embeddedness in ways that helped with progress but left problems in the technical documents (i.e. 'political consensus building' and informal procedures for Public Consultation). This could imply the need for structural responses such as more procedures and regulations to deal with the possibility that actors may use 'ways of thinking and acting' which compromise the technical quality and accountability of the project. On the other

hand, as the case study shows, the existence of rules does not guarantee that these will be followed, especially if taken over by other embedded or socially constructed priorities and not internalized by the actors involved in the process.

Consequently, it must be taken into account the need for internal coordination - over the PRI formulation of PPP projects, which acknowledges and reflects on the role of process, context and socially constructed aspects. However, this must not reduce the flexibility of the process through the over imposing of rules, controls and regulations. It is important to prevent that actors become so obsessed with dictating, controlling and regulating everything ('how things should be done') that quality, results, and outcomes are ignored (Osborne & Gaebler, 1992, p. 14). Moreover, as Olsen (2006, p. 9) asserts, "the blessing of rules may be mixed" because standard operating procedures can improve accountability through rules, but reduce necessary discretion and flexibility if they hamper reasoning and improved adjustments. The alternative is the introduction of a control level based on external guidelines and internal supervision that allows for quick decision-making but without losing focus of the legitimacy of project formulation and future implementation with the link to 'democratic accountability' (Demir & Nyhan, 2008). Finding this balance is a challenge and an implication for future research.

A level of control that may not hamper flexibility can include the setting of external requirements of accountability as boundary guidelines. They need to work as cues or 'fire alarms' to stimulate and trigger concern of actors involved in the process that following procedural requirements can improve the sustainability of the PPP project (West, 2004, p. 66). These requirements need to be accompanied by constant internal supervision that accountability checks and balances are being considered. For example, as the case study suggests, this depends on the development of internal awareness regarding the importance of considering fiscal, financial and social accountability issues while discretion for strategic flexibility takes place.

Next section will discuss general implications for practice based on the findings from this research, emphasizing the importance for coordinators, project managers and leaders to be aware of the influence of internal process elements, such as complexity, contextuality and soft capacity elements. The sub-section that follows will consider informed recommendations based on the previous reflections to inform actors' 'ways of thinking and acting' in the pre-tendering formulation of infrastructure PPP projects in Brazil.

### 10.3.3 General implications of process for practice

The Brazil PPP Framework neglects several strategic elements for the practice of PPP project formulation suggested as important in the analysis of the case study: a balance between guidance and flexibility/dynamics, informal interactions, mobilization of soft capacity elements (i.e. compromise, reflection, participation, coordination) and acknowledgement of systemic embeddedness in a broader fiscal, financial, regulatory, economic and political cultural context.

The analysis of EPISODE 2 shows that actors were not able to overcome the complexity involved in the contextuality of a PPP formulation process, which demonstrated the inadequacy of an instrumental strategy for the formulation of PPP project. The analysis highlights that the instrumental strategic approach of the generally adopted PPP Framework for PRI cases in Brazil is inappropriate for organizing the formulation of PPP projects, especially because it suggests a rigid strategy based on the pre-fixed scope and objectives, activities, budgets, timeframes. It also disregards the dynamic, systemic and contextual characteristics of PRI pre-tendering arrangements involving the project finance elements of network of interdependent actors, informal dynamics and the need for constant adjustment in premises and studies during the strategy implementation. The case study demonstrated that document elaboration and definition of project premises often happen simultaneously for the formulation of projects that rely on network of actors and require constant adjustment and readjustment, especially because of the contextual and dynamic character of the process.

It is the instrumental separation of strategy implementation from formulation that requests the need for plans, programmes and controls to ensure commitment and the following of procedures (Mintzberg & Waters, 1985). However, this reduces the ability of strategic adjustment, which is important for the formulation of PPP projects, a process characterized by dynamics and continual change. Therefore, the Brazil PPP Framework needs to account for the importance of a strategic planning approach as suggested by Albrechts (2004), which “demands a decision-making style in which the stakeholders become actively involved in solving policy problems on the basis of a joint definition of the actual situation and of the sharing of interests, aims and relevant knowledge” (p. 754).

In Brazil, one of main strategic guidelines for pre-tendering formulation of PPP projects is the PRI publication. It is common for PRI publications (usually 15 pages) to have

lengthy procedural and regulatory descriptions but only general descriptions of policy objectives (maximum of 2 pages), regardless of the complexity of the policy intervention. Despite the broad objectives provided and the complexity of the infrastructure scope, PRIs generally require from the private initiative to present a work plan for project preparation with clear strategic approach, timetable, deadlines procedures and methodologies for the PPP project formulation. The period allowed for proposal preparation varies from 15 to 30 days, which is considerably short for reflection and planning of strategies for the elaboration of complex PPP projects. PRIs rarely take into consideration the complexity of the infrastructure scope and context, or explicitly requests private parties to account for these elements when proposing the strategic approach. This type of PRI format is generally adopted in Brazil for different infrastructure types of PPP project formulation. One of the few references to complexity identified in the extensive review of PRI decrees and publications is with respect to the period for the preparation of studies (pre-tendering stage), explicit in article 2 of the Federal PRI Decree: *"§ 4 In establishing the deadline for submission of projects, studies, surveys or investigations, it should be considered the complexity, necessary articulations and licenses for its preparation"* (Decree n. 5977, 2006). However, the Federal PRI Decree is only mandatory for formulation of federal PPP projects. States and municipalities may use the federal format as guidance, but can also elaborate their own decrees and PRIs, which in most cases do not account for complexity. Therefore, PRIs in general do not consider the different levels of complexity involved in formulating PPP projects at the federal, state or municipal levels.

The Brazil PPP Framework assumes that actors are able to implement strategies if they receive appropriate hard and instrumental technical training and manuals of best practices. The case study, on the other hand, suggests that the ex-ante training of teams and coordinators are not sufficient. It highlights that soft organizational and human capacity elements, which are developed and constantly reinforced during the process, must also receive increased attention in a broader PPP Framework. Considering the informality of the PRI pre-tendering process, in which there is no legally binding contract holding the process together, an important lesson from the study is the importance of soft aspects that 'glued' actors together despite initial frustrations, such as motivation, self-perception of involvement, commitment, collaboration and initiative. Actors did not rely solely on 'capacity for what', that is, trainings, best practices and procedures and on instrumental capabilities. They relied more on 'capacity of what', that is, on the soft elements which

influenced the progress of the process and the overcoming of problems, obstacles and impediments (Morgan, 2006, p. 17).

In the case study, in the production and reproduction of the 'systemic strategic arrangement', actors showed capacity to reflect on problems, to draw on 'commitment packages' during the process, to make concessions and compromise, to engage and collaborate in informal interactions and to coordinate, which inspired a sense of process ownership and facilitated agreements and adjustment in technical premises during the process. The case study shows that the design of the strategic arrangement that helped actors in the pre-tendering stage depended not only on 'institutional hardware' in terms of rigid and instrumental capacity aspects, formal rules and operating procedures, but even more on the 'institutional software' through practical 'ways of thinking and acting', such as collaboration, compromise, motivation, initiative, commitment, process ownership, and the overcoming of insecurities and frustrations (Dryzek, 1996, p. 105).

The case study also indicates that the 'learning by doing' approach requested the close participation of leaders guiding and coordinating the strategy implementation for the formulation of a PPP project. In EPISODE 2, under the emergent strategy politics took over technical and legal requirements when actors worked without coordination, guidance and leadership. The 'learning by doing' strategy of EPISODE 3, however, which was more useful for the process, compensated for the lack of guidance under the emergent strategy. Coordinators had the strategic capacity to recognize, handle and take advantage of the contextual influence of economic, fiscal and financial forces. On the other hand, they were not able to guarantee a well-designed project and allowed the influence of political culture to compromise the final design of the PPP project. Therefore, based on the indications from the findings of this research, a strategic approach must include flexibility, but also a coordination that is strategically aware of the contextual influence of external forces throughout the PRI pre-tendering process. The study undertaken suggests that contextual aspects matters and that the stakeholders involved in preparation processes need to pay attention to them with discretion, in order to both prevent their negative interference with the PPP project design and to take advantage of these aspects when necessary.

In order to reduce the rigidity of plans and pre-set activities, flexible strategies need to be combined with leadership and articulation of intentions in order to prevent actors from straying outside boundaries and drawing on contextual influences that may compromise the project quality (Mintzberg & Waters, 1985). The role of coordinators is

essential for continuous guidance, especially because of the interactive nature of feedback and learning, as well as the need for continuous monitoring the environment and making changes. In the formulation of complex PPP projects, the boundaries between internal and external conditions are continuously re-constructed and highly permeable (Chaffee, 1985; Hart, 1992).

The case study emphasizes that experience in coordination and leadership is contingent upon specific socio-historical contexts because the appropriate choices, solutions and decisions are also specific to the context in which obstacles take place (Coaffee & Headlam, 2008, p. 1588). For example, the case study shows that actors may draw motivational aspects from contextual factors to stimulate and maintain commitment of other crucial actors involved in the preparation process. Identification and mobilization of these contextual opportunities requires capacity and alertness from coordinating actors involved to act as institutional entrepreneurs. As Lowndes and Leach (2004) suggest, “one of the crucial capabilities of leaders is their ability to ‘read’ (or interpret) the context and adapt their leadership behaviour accordingly” (p. 571). Specific contextual aspects are not possible to identify a priori, and the contextual factors that appeared in this case study may not be directly applicable to other cases. It is important, therefore, to be alert for embeddedness of the pre-tendering process in its specific context, because this awareness may prove useful and efficient in assisting the formulation of a PPP project. As the case study suggests, leadership, control and coordination are also essential to prevent contextual political factors from dictating the details of the PPP documents being produced, in case they compromise the technical and legal quality of the design, as well as its compliance with fiscal, financial and social accountability requirements.

Although future research is needed to explore how this possibility takes place, other cases of PPP may also be influenced by locally embedded institutional practices and politics that can affect how new approaches and strategies are interpreted in the pre-tendering process of PPP formulation (Coaffee & Headlam, 2008). Therefore, equilibrium between flexibility and control must be reached, and this is possible in the Brazilian context. As it was mention in Chapter 2, ‘juxtaposition’ of models is already present in Brazil (Capobianco et al., 2013; Drumond & Silveira, 2012; Gomes, 2006; Mafra, 2005; Silva, 2011; Siqueira, 2012). This balance is important because there is a ‘dark side’ of pragmatic responses, which may be rooted in the contextual embeddedness of processes in historical and local governance traditions and power relations, which can strongly influence

outcomes (Coaffee & Headlam, 2008, p. 1588). However, for process strategies to be successful it is important awareness for the complex ways in which the dynamics between contextual actor-relations, politics and other external influences can corrupt the flexibility of a process, as well as to acknowledge tensions within public sector administration and between “statute/direction/guidance and creativity/flexibility/experimentation” (Coaffee & Headlam, 2008, p. 1588).

Therefore, this research suggests for the practice of pre-tendering PPP formulation based on the Procedure for Request of Interest a combination of innovation, creativity and flexibility in accordance with local contingency, alongside a system of guidance focused upon fiscal, legal, financial, social accountability (‘democratic accountability’), as well as performance management and ‘best-value’ targets, considering that the main goal of a PPP formulation process is to design projects that will be successfully implemented (‘planning ability’) (Coaffee & Headlam, 2008; Demir & Nyhan, 2008). This research suggests an approach that allows the “application of general and fixed concepts (policies, law, standards) to particular and fluid practicalities (situation, circumstances, persons)” (Hildebrand, 2005, p. 355). These fixed concepts must introduce accountability concerns in the elaboration of PPP projects in contextual systems.

Nevertheless, it is important not to mistake flexible strategies in the formulation of PPP projects with flexible accountability guidelines which may compromise the long-term success of infrastructure PPP interventions. In this research, the suggestion for strategic flexibility refers to the ability to deal with a network of interdependent actors, changing decisions and the coherent integration of scattered document production. It does not suggest flexibility in the approach to accountability, which must equate concerns over fiscal, financial and social responsibility. Thus, external guidelines and internal control are necessary to prevent that flexible process strategies are also used to advance short-term goals and respond to contextual influences that are not in line with the longevity of complex PPP projects (lasting up to 35 years, according to the Brazilian legislation). However, to facilitate a systemic process of checks and balances on accountability, requirements must be clear and internally absorbed by the actors involved. As argued in this research, based on its theoretical and conceptual frameworks, structural forces over the pre-tendering process do not prevent actors from creating their own systemic institutional arrangement. In the case study, for example, socially constructed elements, such as mobilizations for political consensus building and informal procedures for



overcoming bureaucracy, became influential rules in the process and compromised the project quality and accountability. However, this may be offset if systemic rules are also influenced by concerns of conscious actors over the importance of accountability for the project in the long run, and if coordinators are capable of intelligently using soft capacity elements (i.e. relationships, innovation, adaptiveness, imagination, self-reflection, collaboration, etc.) in order to obtain support and commitment of other actors in favour of financial, fiscal and social accountability.

Next section presents informed practical recommendations based on the findings from this research. Two main aspects are considered: 'procedural accountability' in terms of rules and guidelines to trigger actors' concern for accountability in the process (West, 2004); and political/contextual competence, which refers to a mechanism by which contingent sensibility promotes systemic responsiveness to democratic values and accountability requirements when following procedures and legislative intentions. This includes capacity for discretion on whose interests to consider (Demir & Nyhan, 2008; West, 2004), as well as for assessing the 'correctness' of decisions (Rondinelli, 1976, p. 77) and the legitimacy of actors' demands in a specific systemic context (Pettigrew, 1977, p. 85) .

### **10.3.4 Informing recommendations**

Before suggesting recommendations, it is important to acknowledge the difficulties of such an attempt considering that, based on the research findings, unique specificities to actors' contextual systemic environment will mostly likely influence the formulation of PPP projects. Furthermore, in view of the boundaries of the research scope, it would be incredibly challenging the attempt to both unravel significant aspects influencing the PPP formulation to highlight the relevance of process and, at the same time, to set forth a ready-to-implement practical framework to improve pre-tendering processes of PPP formulation. Yet, it is still worth reflecting upon issues that may be relevant to most PRI pre-tendering systems, such as the complexity and contextuality of formulating PPP projects, the large number of stakeholders and the multiplicity of 'ways of thinking and acting'. Furthermore, external forces are also common systemic influences, such as the highly politicized scenario in which public-private interactions take place in Brazil, the existence of legal and organizational frameworks and the importance of fiscal, financial and economic circumstances. These external forces may be revealed differently in various social contexts, but they are abstract forces that can recurrently work as constraints or enablers in different systems of PPP formulation.

Two main topics will be explored in this section to inform recommendations based on this research's findings: (1) procedural accountability, on considerations over legal and organizational elements, as well as fiscal and financial concerns and the influence of politics; and (2) contextual and political competences, which present reflections on the practical role of coordinators in the formulation process. Although these two topics were issues obtained from the analysis of the case study and drawn as evidence from its context, they suggest observations that can be transferred to other cases of PPP in Brazil. 'Procedural accountability' considers the wider scenario of PPPs, which is largely influenced by Brazilian legislative and administrative procedures for the organization of PRI pre-tendering processes. As for 'contextual and political competences', these refer to the importance of reflecting on the contextual embeddedness of the process during the pre-tendering PPP formulation, and more specifically to the role of politics, which according to the literature, cannot be separated from the analysis of policy-making (H. Campbell & Marshall, 1999; Demir & Nyhan, 2008; Forester, 1982; Nalbandian, 2006; Svava, 1999, 2001; West, 2004).

a. Procedural accountability

This is a term used by West (2004) which refers to the instrumental requirements for following due procedures of the public administration in order to assure that the legitimate exercise of responsibilities by public actors is in line with democratic accountability. With respect to the formulation of PPP projects, some procedural guidelines are well-established in the Brazilian legislation for assessment of the fiscal and financial impact of the government commitment with pecuniary payment and guarantees with respect to public budget and annual and multiannual plans (article 10, Law n. 11079, 2004). However, considering the financial accountability in terms of value for money assessment of PPP projects, the absence of clear federal, state and municipal requirements and guidelines on how to prepare it and what to consider in the document create difficulties for actors to decide on two main aspects: (i) whether to proceed with a PPP based on criteria for evaluating "the merit or worth" of the PPP project; and (ii) whether the risk transfer and allocation between public and private sectors are correctly derived and operationalized (Jane Broadbent & Laughlin, 2003, p. 338). Since value for money requirements are not well-established in Brazil, it may influence actors' neglect for preparing a document demonstrating the project's financial feasibility. It may also influence the use of methodologies that do not really demonstrate the cost-effectiveness of the PPP. This research's case study shows that it is possible that actors involved in the formulation may

develop their own systemic procedures for evaluating the “merit or worth” of a PPP project (or the waving of cost effectiveness assessments), which may not be based on criteria of financial, fiscal and social responsibility.

As many authors argue in the literature, the formulation process of complex projects such as PPPs is difficult to control because of the contextual influence of socially constructed elements (i.e. Brews & Purohit, 2007; R. Mason, 2007; Sanderson, 2000; Sanderson, 2009). However, the difficulty to maintain control over a turbulent and unstable process does not necessarily mean that universal guidelines are useless; especially considering that they can be internalized by actors involved in the systemic process and in turn influence the dynamics of PPP formulation as socially constructed rules. As the case study shows, in some instances the existence of external rules and procedures (i.e. legislation guidelines for fiscal and financial assessment and delimitation of organizational roles) may not be sufficient to enforce accountability concerns because their use in practice can be manipulated, ignored or distorted (i.e. through political or informal routes of decision-making). On the other hand, this scenario may become more positive if through adjustments in local culture and knowledge actors internalize the importance of overall guidelines and the need for systemic control over accountability issues for the long-term success of the project. It is less likely that actors will consider and worry about accountability if clear requirements are not set as constant reminders or ‘fire alarms’ during the process of interactions (West, 2004, p. 66)

Nevertheless, as it current stands in Brazil, accountability concerns are often ex post project formulation (sometimes only in the implementation stage), when government decision-makers may be held accountable (or not) for projects that are not in line with the requirements of Brazilian legislations. In some instances, external control bodies, such as the Federal Court of Accounts, examine project documents in earlier stages, but this is not a regular practice (Brazilian Federal Court of Accounts, 2010b). An alternative to promote increased systemic attention over fiscal, financial and social responsibility is the participation of representatives from external control bodies not simply as structural forces, but as internal stakeholders to raise constant awareness of accountability checks and balances during the pre-tendering formulation stage. According to the Brazilian legislation, elected officials are also considered external control actors with an important role of ‘political guidance’ and ‘legislative oversight’ over policy processes (Demir & Nyhan, 2008). In the case study, however, they did not have an internal participation in the formulation of

the city centre urban mobility project. As a suggestion, elected officials could also join the process with more active internal roles as accountability watchers during PPP formulation.

Since this research considers that actors may develop systemic rules that influence their behaviour, the presence of stakeholders with a direct concern over accountability constantly participating in the pre-tendering stage could assist in emphasizing the importance of attending to the long-term overall sustainability of the PPP project. Actors must be aware that decisions based on short-term interests (i.e. neglect for value for money assessment and non-compliance with regulations to speed up process towards Public Consultation) may lead to adverse consequences in the future, such as the implementation of a non-feasible project that will represent a burden to the public budget, that may not result in profit to the private sector or that may provide inefficient services to the population. To stimulate additional awareness, actors could be reminded of the possibility to be held accountable for short-term oriented decisions during the pre-tendering stage, and not only ex post project formulation, when public officials may no longer be in office, or even when the initial private investors that participate in the pre-tendering stage may choose to transfer responsibility for implementing the project to another private consortium.

The transfer of stockholding control over the Special Purpose Company (SPC) responsible for service provision is a controversial procedure allowed by the Brazilian PPP legislation, (article 9, § 1, Law n. 11079, 2004 - Chapter 2, section 2.7.2, defines the concept of SPC). Although the transfer can only happen upon authorization from the government, this is a fragile procedure because actors in the public sector may be under qualified to evaluate the capacity of substituting companies or may be influenced by political strategies. As result, it is possible that consortiums formed by construction companies will engage in the formulation of PPP projects for service provision when, in reality, they are mostly interested in the execution of construction works, but not in the service provision aspect of the project scope. They may enter the pre-tendering stage, by deceiving already fragile procedures that assess qualifications in PRI proposals, and aim to transfer (sell) the project to service provision companies after winning tendering competition and executing public works. As a result, at the pre-tendering stage, projects may be designed with a greater focus on the profits to be earned during the construction phase of infrastructure works, while not much consideration is given to the provision of services to the population. In this case, it is possible that not much attention will be paid to the quality of technical details

related to the PPP service provision, compromising the quality and efficiency of service delivery and the project's social accountability to society. However, these problems can be avoided if coordination and supervision from the public sector is (a) actively involved during the pre-tendering stage (especially since the phase of assessment of consortium members' qualifications in PRI proposals); (b) politically aware of such strategies; and (c) capable of developing technical network-relations to assess feasibility of projects premises prior to authorizing transfer of SPC control. In this way, it is possible to internally emphasize the importance of decisions based on the long-term success of the PPP intervention, considering both construction and service provision.

Another aspect to be considered, especially at the municipal and state levels, is the participation of representatives from federal control bodies to exercise accountability oversight during the pre-tendering formulation. This may prove essential because the role of actors from state and municipal control bodies in projects at the same federative levels may be distorted by pre-established informal connections in those political arenas. It is possible that public and private actors involved in the PPP formulation at state or municipal level are personal acquaintances of or have previously worked with representatives of control bodies in these same states and municipalities, facilitating non-compliance with procedural accountability requirements. In the case study, for example, there were indications that the role of internal control bodies (City Attorney General Office, PPP Unit and Managing Council) was diminished by the informal interactions that may have facilitated extra-official discussions and the replacement of the formal bureaucratic procedures for Public Consultation. Therefore, it is also important to keep an eye for this possibility, considering the involvement of external control bodies at the same level of project intervention (i.e. state or municipal Courts of Accounts and state Public Ministries).

#### b. Contextual and political competences

There are numerous criticisms of a politics-administration/planning dichotomy, which argues that the work of public actors or planners in processes of policy-making and planning can be neutral, objective and independent from politics (H. Campbell & Marshall, 1999; Demir & Nyhan, 2008; Forester, 1982; Nalbandian, 2006; Svava, 1999, 2001; West, 2004). From a planning perspective, Forester (1982) asserts, there is "no choice to be technical or political". He argues, for example, "the technician is necessarily a political actor" and, therefore, important aspects that must be addressed include: "In what way? How covertly? Serving whom, excluding whom?" (p. 69). To answer these questions, actors

involved in policy processes such as PPP formulations must exercise 'political accountability' (West, 2004), which is discussed in this section.

Based on the findings from this research, it can be argued that context (i.e. politics) influences instrumental-procedural work (Forester, 1982; West, 2004), but this influence does not necessarily have an adverse effect, which requires a case-by-case reflection. The case study showed, for example, that political sensibility brought to the foreground demands of street vendors (i.e. ground level commercial centres located in the city centre), which were included in the project design, but could have been ignored in a different systemic arrangement. As Demir and Nyhan (2008) mention, "only a good understanding and appreciation of political realities might enable public administrators to act more autonomous" (p. 92), which includes discretion capacity to reflect on the adequacy and legitimacy of political and other contextually constructed demands. Therefore, Demir and Nyhan (2008) suggest that neutral competence should be replaced by political competence (Nalbandian, 1999) or political accountability (West, 2004), (but also by contextual competence) especially to prevent that relevant issues ignored at the formulation stage become major problems in the phase of implementation (Demir & Nyhan, 2008, p. 92). For example, if demands from street vendors were not considered in the case study, it is possible that they would have resisted the implementation of the city centre PPP project in later stages, which was the justification provided by many interviewees during mobilization for 'political consensus building'. On the other hand, the inability to prevent the influence of sensitive issues during the project formulation stage may also cause problems in the future. As it happened in the case study, the engagement of actors in informal routes that waved official accountability requirements may lead to the publication of fiscal and financial unfeasible PPP projects for Public Consultation. If an unfeasible project progress towards the implementation phase, it is possible that public or private actors may become unsatisfied and resort to mechanisms of conflict resolution, which can delay and interfere with the quality of service provision.

Being blind to the influence of politics and other contextual issues during the formulation of PPP projects will not prevent them from interfering with the process. A possible result of ignoring these issues during the pre-tendering stage is the displacement of concerns to different arenas in later states to amend the consequences of not having considered them in due time (Allmendinger & Haughton, 2012). Moreover, as Allmendinger and Haughton argue (2012), participation in these arenas of conflict resolution may be

“accessible only to those with the expert support and financial means to participate” (p. 100). In Brazil, disagreements on contractual issues of PPP projects can be solved via arbitration, which is stated in the PPP legislation as a tool based on the use of private mechanisms of conflict resolution (article 11, item III, Law n. 11079, 2004). Based on the Federal Arbitration Law of 1996 (Law n. 9307), the instrument of PPP adopts arbitration aiming at consensual solutions and accelerating procedures in case of conflict between the parties, especially considering the perception of slowness in the Brazilian judicial system, which is overwhelmed with cases (Pincer, 2013). However, resorting to processes of arbitration does not necessarily facilitate the resolution of conflicts or make it easier to amend issues ignored during the PRI pre-tendering formulation stage. In Brazil, experts say that arbitration processes also face difficulties and are time-consuming because of inadequate elaboration of clauses in PPP contracts to allow arbitration, lack of experience from arbiters and resistance from the Brazilian legal community, considering that the culture of arbitration has not yet been strongly incorporated into the Brazilian legal system (Santos, 2010; Sette, 2011). Furthermore, political competence is necessary in these processes because the definition of arbitration rules and selection of a judge to intermediate the process are at the discretion of actors involved. This legal flexibility can also be influenced by political and other contextual decisions that may not improve the PPP project format as a result of the arbitration. According to the Federal Arbitration Law, public and private actors “may freely choose the rules of law applicable in the arbitration, as long as their choice does not violate good morals and public policy” (article 13, Law n. 9307, 1996). Moreover, as stated in the law, the definition of judges is also supposed to result from consensus between the parties. Experience and know-how are considered important, but the only legal requirement is ‘trust’: “any individual with legal capacity, trusted by the parties, may be appointed as arbitrator” (article 2, § 1, Law n. 9307, 1996). Consequently, even for conflict resolution in stages of contract execution, recognizing the embeddedness of the process in a systemic context is an essential aspect.

The introduction of concepts such as contextual and political competences in practice entails discretion, self-reflection and judgment especially from actors in coordinating roles. It also requires a ‘watchful eye’ for the use political resources to advance interests which may compromise the democratic accountability and feasibility of the PPP project. Political resources may include “money, credit, control over jobs, votes, information, expertise, popularity and others – and varying skills at utilizing them” (Rondinelli, 1976, p. 77). In addition to that, these competences require knowledge and

expertise of coordinators about different strategies for dealing with the multiplicity of stakeholders. They must know which approaches allow them to keep checks and balances on accountability while maintaining the flexibility to integrate stakeholders, to guide decision-making on technical premises and to manage soft capacity elements for network development.

Alternatives of action in line with guidance and flexibility are important to prevent that, when facing a turbulent and complex environment, actors resort to more rigid procedures in the attempt to control perceived uncertainties, which is the tendency in the way of doing things in Brazil. This controlling approach means that actors are simply choosing “to hide behind the bureaucratic machinery of standard procedures provided by the state” (H. Campbell & Marshall, 1999, p. 475), instead of facing the complexities of the PRI pre-tendering process. Another strategy to avoid in the complex scenario of PPP formulation is choosing to give in completely to flexibility. The latter option can become problematic if flexibility as a project formulation strategy is extended to the conceptual approach to accountability, which may be influenced by political interests that compromise the sustainability of the project. As Nalbandian (2006) mention, the coordinator (or manager) of the process need to be “at the nexus of what is politically acceptable and what is administratively feasible. It is his/her job to facilitate the connection. (...) The manager ‘convenes,’ ‘builds bridges,’ and creates ‘intersections.’ In all of this, the manager must remain politically sensitive but politically non-aligned” (p. 1049). Therefore, in PPP formulation processes, political competence requires flexibility because of the many aspects that need to be integrated and balanced. It involves the ability to identify, promote and use soft capacity elements to build linkages and connections in order to foster compromise between the different interests, perceptions and opinions involved in the PRI pre-tendering stage, as well as the ability to manage the embeddedness of external forces in the systemic context. As Rondinelli (1976) suggests:

“Policy-making involves trade-offs among economic, political, social and other criteria, weighing tangible facts, information, and data against intangible and incalculable potential opportunities and constraints. Quantitative variables must be balanced with qualitative factors. Decisions affecting immediate problems and issues must be balanced against long range impacts and consequences. A wide variety of goals, criteria and interests considered important by different groups and



individuals must be reconciled ... [and] capable of attracting sufficient support to be enacted and implemented” (p. 77).

An assumption that politics and other contextual elements will not influence the formulation process of PPP projects in Brazil is unrealistic. However, it is also important to acknowledge that introducing the concept of actors as creative learners with capacity for constant sensemaking, reflexivity and adjustment of expectations along with political and also contextual competence is an ‘uneasy fit’ for regulatory systems, such as the Brazil PPP Framework for the formulation of PPP projects (H. Campbell & Marshall, 1999). As Campbell (1999) argues, “there is an inherent tension between demands to maintain professional autonomy and the state’s requirement to implement due procedure” (p. 475). However, based on this research’s findings, external accountability requirements and external control, although important, are not sufficient to guarantee that PRI pre-tendering processes in Brazil will lead to the ‘democratic accountability’ (fiscal, financial and social responsibility) and ‘planning ability’ (successful project implementation) of the PPP project (Demir & Nyhan, 2008). Since actors have the capacity of creating their own systemic rules, these requirements may also be ignored and placed in the background. Therefore, it is imperative that coordinators have the capacity to consider the multiplicity of interests and different ‘ways of thinking and acting’ influencing systemic definitions of accountability, which may not be in line with long-term feasibility of the project. Coordinators must promote shared understandings on boundaries of actions (Richardson, 2005, p. 349) and exert internal roles for overseeing fiscal, social and financial accountability during the PRI pre-tendering process. This approach may help to reinforce the importance of accountability concerns as essential systemic rules guiding decisions and actions. Therefore, a flexible strategic approach that accounts for the multiplicity of actors and interests, technical decisions and documents must not compromise concerns over fiscal, financial and social responsibility.

#### **10.4 Reflections on learning from the research process**

The theoretical approach and research design adopted allowed the in-depth exploration of the PRI pre-tendering stage of PPP formulation in the context of the case study. The institutional lenses were actually useful in helping to unravel the dynamics of actor-relations in the process of PPP formulation through a qualitative line of inquiry. This research demonstrates that it is possible to obtain lessons and insights for solving problems in policy-making and practice through the analysis of processes. Consequently, these

insights also provide lessons learned from the research process to policy and practice, especially considering the limited use of systemic qualitative research design for empirical policy analysis in Brazil. Thus, the study in this research demonstrates the importance and usefulness of qualitative research for unravelling complexity involved in policy processes.

The use of a qualitative approach and the focus on process based on the institutional theoretical and conceptual frameworks presented in this research were useful tools for exploring more influential aspects than it was initially anticipated. These were efficient tools for unpacking unclear and tangled arrangements involving a variety of actors and interactions. When this research process began, the workings of actor-relations in PPP project formulation in Brazil were still under-explored. Based on the insights from the literature review and from the unstable traditional public-private relations in Brazil, it was initially expected that the analysis of the case study would reveal distrust and suspicion between public and private actors as some of the main elements in the internal dynamics of the PPP formulation process. It was initially expected that internal instability caused by scepticism and suspicion could represent an impediment that actors would have to overcome in order to finish the pre-tendering stage, especially based on adjustments in actors' practices and perceptions. Nevertheless, distrust, suspicion and scepticism were not revealed as major problems in the internal relations between public, private and consultancy actors.

Since these concepts did not take over the data analysis, other aspects were brought to the foreground, revealing more important elements that emphasized the role of process in the formulation of PPP projects, which has been generally neglected in the field of policy analysis in Brazil. For example, among many contextual aspects which exemplify the importance of process, the case study revealed that actors internally decided to cooperate and compromise, despite their expectations of external scepticism from society and other public actors not involved in the process. Based on perceptions of resistance against the PPP instrument and through actors mobilization for 'political consensus building', they defined some of the project specifications, such as property locations and the physical design of parking lots and commercial centres.

The particularities of the case study cannot be directly transferred to other cases of PPP in Brazil, but they were substantially useful to highlight the relevance of reflecting on the role of process in the PRI pre-tendering formulation of an infrastructure PPP project. Therefore, another learning aspect from this research process was the capacity to obtain

lessons to the wider Brazilian experience on PPPs from evidence of a qualitative research, based on a single in-depth case study.

Another learning aspect refers to the role of politics in the formulation of PPPs for infrastructure development. This was a specific aspect revealed in the analysis of the case study, but it is possible that politics will also represent an influential element in other cases of PPP in Brazil and worldwide. However, the concept of political decision-making influencing the formulation of PPPs is not given enough emphasis in the literature on large infrastructure projects, especially 'external forces' strand. The focus is generally placed on political culture or on the improvement of process management to facilitate public-private interactions, but some empirical attention is given to politics (although not directly related to PPPs) in institutional studies in the urban planning literature (i.e. Albrechts, 2003a; Albrechts, 2003b) and public administration (i.e. Lowndes & Leach, 2004; Lowndes, Pratchett & Stoker, 2006; Nalbandian, 2006). However, there needs to be more awareness for the fact that politics cannot be ignored as a possible influential element in the formulation of PPP projects, even if clear rules and procedures are in place.

Finally, in the literature that addresses politics in infrastructure PPP policy processes, there is not much emphasis placed on the issue of power relations. In the theoretical and conceptual frameworks of this research, 'power' as a specific analytical concept was not specifically addressed, even though some aspects related to this concept were accounted through considerations over politics. This is the double-side of institutional theory, which allows the in-depth exploration of numerous elements that may influence processes and the internal dynamics of actor-relations, but may reduce the focus on specific aspects. Nevertheless, since this research was interested in unravelling the intertwining processes of the PRI pre-tendering stage of PPP formulation, particular issues of politics or power are contextual particularities that must be explored on a case-by-case basis.

Based on the initial analytical lenses, issues of politics were unravelled from the case study; but in future research on the topic, politics and power can be given more attention in the analytical approach guiding the research process. However, if the use of institutional theory is aimed at an in-depth exploration of an empirical case, it is important to attend for other aspects that may also be relevant (i.e. soft capacity elements, strategic approaches).

## **10.5 New questions and future directions**

### **10.5.1 Future research**

This research was pioneering in stimulating the reflection on process by stakeholders involved in a pre-tendering formulation of a PPP project. Therefore, future research needs to continue to explore the role of process in policy analysis of PPPs or other instruments of public policy in Brazil, so as to promote process awareness in the Brazilian context.

Moreover, as a future direction for research, other cases that have completed the PRI pre-tendering process could also be explored as in-depth case studies to confirm the findings of this research and also to explore the possibility that other elements not unravelled here are also important influences on the pre-tendering formulation of PPP projects based on the PRI mechanism. For this, researchers can focus specifically or more generally on:

- The entire policy cycle (agenda-setting, formulation, tendering process, contract signature and implementation of the PPP project);
- The influence and participation of other actors in the process, such as media, local society, control bodies;
- The structural role of external forces, such as political economy, financial environment for PPPs and legislations;
- Power relations between actors involved (directly or not) in the pre-tendering formulation process of infrastructure PPP projects;
- The technical aspects of project finance;
- Relational and flexible contracting methods for PPP project execution, which is an approach still not formally adopted in Brazil, but generally acknowledged worldwide for contracts of infrastructure PPP projects, especially considering their complexities and embeddedness in changing contexts not only at the formulation stage, but also during the phase of implementation; and/or
- The issue of 'value for money', since in Brazil there is no standard format of 'value for money' that can instruct actors on preparing the document. The elaboration of the document is usually based on quantitative assessments of risk analysis and cost-effectiveness of the PPP project; without considering qualitative aspects, such as context and human relations. Moreover, the private sector is free to use the

format it finds most adequate. Some manuals of best practices propose alternatives, but they are not mandatory.

### **10.5.2 Policy/Practice community**

There are several future directions for policy and practice, which concern how policy-makers and practitioners can use the knowledge resulting from this research's findings:

1. Ways to 'spread' the findings across time and space: the knowledge that process matters, informal interactions matter, soft capacity elements matter, context matters, flexibility in the strategy matters, but that this must be accompanied by a balance between coordination and control to assure responsibility and accountability in the long-run.
2. Finding a balance between flexibility and coordination/guidance:
  - a. In Brazil this is important because of the novelty of the PPP theme;
  - b. Embeddedness of old ways of thinking and doing things;
  - c. Highly politically contextualized scenario.
3. Overcoming challenges to innovation because public and private actors may be tied to mainstream 'ways of thinking and acting' based on the models and blueprints of the Brazil PPP Framework.

Thus, considering possible and future attempts at spreading the findings of this research and introducing innovations that are different from the mainstream way of formulating PPP projects in Brazil, a starting point may be the approach proposed by Healey (2006, 2007), Coaffee and Healey (2003) and González and Healey (2005) for transformation processes in governance. As they argue, innovative changes start and are revealed in systemic episodes of interaction, but for them to spread across different systemic contexts, they must move beyond the level of conscious and self-reflective actors' invention and mobilization (specific systems) to that of systemic accepted 'ways of thinking and acting' (discourses and practices) and beyond to broadly accepted cultural norms and values across systems (level of external forces). Consequently, the development of new understandings and proposals for the PPP formulation process – informed by the suggestions from this research - need to overcome the possible reluctance against new ideas and initiatives that challenge mainstream administrative routines, which are mostly based on the insufficient guidelines of the Brazil PPP Framework.

The use of transformative 'ways of thinking and acting' based on the lessons learned from this research, which are not in line with the current mainstream approach for pre-tendering PPP formulation, need to start in the specific cases, through actors' mobilization, but also need to be introduced in the overall project formulation culture of the country and stimulated by the wider social context. For this, three initial suggestions are proposed by Healey (2004) based on the kinds of mobilizing efforts that might help to build the capacity to encourage innovative practices and move beyond pre-existing conceptions and routines:

- Networking to disseminate the new ideas and to translate them into a wider understanding (i.e. local, state and federal levels: seminars, conferences, workshops, one-to-one informal interactions, academic, professional and governmental publications);
- The use of 'institutional auditing' (p. 98) to scan across different contexts at municipal, state and federal levels in search of capable actors and innovative ideas and practices which can help to promote transformative energy and mobilization capacity (seeking existing visible arenas where actors are open and receptive to new ideas, but also stimulating potentials);
- Open minded tolerance for accepting and appreciating a new approach to PPP project formulation: acceptance that experimental 'ways of thinking and acting' require recurrent attempts for improvements based on experiences of failure and success (p. 98).

It is also important to consider that the transformation of mainstream ways into innovative approaches is a complex process that may take a long time (Healey, 2004). Coaffee and Healey (2003) argue that the adjustments in specific cases or systemic episodes of interactions are much faster than the transformation in generally accepted and mainstream routine and practices. However, as Healey (2004) emphasize, it is "through lots of small interventions around particular projects and initiatives, in networks, in discourses and practices" that innovative systemic 'ways of acting and thinking' expand and may reach the level of external forces, stretching out to different systemic contexts (pp. 99-100). This requires persistence and continuous efforts from policy-makers and practitioners, who cannot become discouraged in face of possible failures.

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## Appendix 1: List of Documents

Documents were used as secondary data source in this research to support and expand evidence from interviews. The following documents were used in this research:

### 1) Legislation:

- PPP Laws: Federal PPP Law (11.079, 2004) and state and municipal PPP Laws;
- Contracting out Laws: Bidding Law (8.666/1993) and Concessions Law (8987/1995);
- The Master Plan of the municipality of Fortaleza: Municipal Law n. 062/2009;
- Decrees and Resolutions (PPP and PRI) (federal, state and municipal levels);
- Procedures for Request of Interest (PR) publications (federal, state and municipal levels).

### 2) Manual:

- Ceara state Operative PPP Manual – official manual elaborated with procedures for formulation and contracting a PPP project.

### 3) Previous sectoral studies about the city centre of Fortaleza:

- By the municipal government:
  - City Centre Re-ordering Plan and City Centre Housing Plan;
  - Study of the Competitive Advantages of the City Centre (economic and urban focus)
- By an independent agency:
  - Action for the New Centre Plan, elaborated by the Chamber of Retailers (CDL- *Camara dos Dirigentes Lojistas*) an association representing the interests of more than 6 thousand local commercial establishments (retailers) in Fortaleza, and a large part is located in the city centre.

### 4) Local and state level newspapers: *O Povo* and *Diario do Nordeste*

### 5) Other documents collected and elaborated during period of field research:

- Technical documents elaborated during field research: engineering projects and feasibility studies (i.e. economic, commercial, financial, social, etc.);
- Legal documents related to the PPP under study (such as tender protocols or “invitation to bid”, contracts, etc.)
- Legislations relevant to the case study published during the period of field research;
- Internal administrative documents from the local government on the case study of PPP formulation process.

## Appendix 2: List of Meetings

Meetings were also used as secondary data source in this research. Data was collected as notes or recordings via participation in meetings as observer. The information obtained was used to validate and triangulate evidence and as sources for discussions in interviews. The list of meetings is presented below:

Meeting number	Groups involved	Meeting Date	Data registration
1	Private Investors Consultancy/technical actors Public sector actors	11/11/2011	Notes
2	Public sector actors Consultancy/technical actors	17/11/2011	Audio/Notes
3	Public sector Consultancy/technical actors	21/11/2011	Audio/Notes
4	Private investors Consultancy/technical actors	06/02/2012	Notes
5	Private investors Consultancy/technical actors Legal representative (Sao Paulo office)	20/03/2012	Notes
6	Private investors Consultancy directors	18/04/2012	Notes
7	Consultancy directors Technical actors	20/04/2012	Notes
8	Public sector actors Consultancy directors	14/05/2012	Audio/Notes
9	Private investors Consultancy directors Technical actors Legal representative (Sao Paulo Office) Public sector actors	05/06/2012	Notes
10	Consultancy directors Technical actors	12/06/2012	No audio
11	Private investors Consultancy technical actors Public sector actors	26/06/2012	No audio

### Appendix 3: Interview schedule (topics and questions)

Interviews were the primary source of data collection for this research. In the beginning of each interview, information sheet (Appendix 4) and consent form (Appendix 5) were briefly discussed with interviewees, who had time to ask questions and clarify concerns. In the interviews, before addressing the case study topics and questions, interviewees were asked to generally introduce themselves, providing name, line of work, role or position in their organizations. Since the interviews were open-ended, based on a conversational and fluid approach, the topics and questions did not necessarily follow the order below and represented a guideline that was used for the data collection process.

#### Joining the process

- Why did you get involved?
- When did you get involved (at what stage)?
- How did you participate (or how are you participating)? What was/is your role in the process? Can you describe?

#### The decision-making process that led to the scope of the city centre PPP project involving PCCs and parking lots

- How did the process start? Where did the idea come from? (who started, where, how, when);
- How was the interaction with public sector or private sector for the construction and decision on the scope? Who were the most crucial stakeholders in the process?
- How was the decision reached? What was taken into account?
- What is your interest in the scope? What is your opinion about the interest of others in the process (public actors, local government, private investors, and consultancy)?
- What are your expectations on this process?

#### On the Public-Private partnership (PPP) policy instrument and on the Procedure for Request of Interest (PRI) mechanism

- Why was the PPP instrument selected? How was the decision reached? Who participated in the decision?
- What is your opinion about the PPP instrument? Problems? Advantages, disadvantages of PPP in comparison to other instruments? Receptiveness internally, externally?

- Why was the PRI mechanism selected? How was the decision reached?
- What is your opinion about the PRI mechanism?
- What is your opinion on the experience of others in PPPs, PRIs and public-private relations? To what extent is this relevant for the process?

Assessment of relations and participations in the process (interviewee and others)

- What was/is the role of public actors in the process?
- What was/is the role of private investors in the process?
- What was/is the role of consultancy directors in the process?
- What was/is the role of technical actors in the process?
- How was their participation? How did you interact with them?

Technical premises for the PPP project

- What was your participation in the definition of premises (such as providing inputs or validating)?
- How were the premises defined (decision-making)?
- Who was in charge of the process?
- How as the gathering of information?
- Were there difficulties and obstacles in this process?
- What has been already defined and what is still missing? Difficulties?
- Can you give me concrete examples?

Opinion about the progress of the PPP (critical analysis on the entire process)

- What have been the crucial factors in this process? To what you determine the progress of this process so far?
- Crucial events? Crucial actors?
- What can be considered obstacles, difficulties? What are your main concerns?
- Have they been overcome? If so, how? Which ones haven't been dealt with?
- What are your expectations for the process (pre-tendering stage)? Why?
- Can you mention impediments or aspects that may help to move it forward?

The interviewee was also asked if he/she wanted to add anything else that had not been covered or discussed in the interview.

## Appendix 4: Information Sheet

**Research Project Title:** [   ]

*You have been asked to participate in the interview process of a PhD research study. In order to help you make an informed decision, important details about the research project and the interview process will be provided to you in this information sheet.*

Considering that Public-Private Partnership (PPP) for infrastructure development is a relatively new instrument in Brazil, the purpose of this research project is to understand the relations between actors in the pre-tendering formulation of these PPP projects based on the Procedure for Request of Interest (PRI) mechanism. For this, the research uses the city of Fortaleza as a case study and the on-going formulation of the city centre urban mobility PPP project, of parking lots and Popular Commercial Centres (PCCs). In face of the current negotiations already taking place in Fortaleza, you have been selected as a possible participant in this study because you are one of the key stakeholders involved in the interactions at the pre-tendering stage. Your perspective is of great importance for this study. By participating in this research project, you will have the opportunity to provide a full representation of your perspective on the subject being addressed.

- Participating in this interview is voluntary, and you will have the right not to answer or comment on any of the questions,
- The interviews are expected to last approximately 45 minutes.
- If you agree to participate in the interview, you will be asked to sign a consent form, in which you will decide the level of confidentiality and disclosure to be applied to the information you will provide.
- Any personal information provided in the interview will be encoded and kept in anonymity, and will also be confidentially and securely stored in a private computer with password protection.

The information obtained from the interview will contribute with my PhD Thesis (Department of Town and Regional Planning, University of Sheffield, United Kingdom). This research project has been ethically reviewed and approved by the Town and Regional Planning Department's ethics review procedure.

If you have any questions regarding the research project, the interview process, your rights as a potential interviewee or need any other clarification, please feel free to contact me for further information by email at [trp10fa@shef.ac.uk](mailto:trp10fa@shef.ac.uk) or by phone at [telephone number in Brazil and UK]. Alternatively, you may contact my supervisors, Professor Craig Watkins at [c.a.watkins@sheffield.ac.uk](mailto:c.a.watkins@sheffield.ac.uk) or Professor Gordon Dabinett at [g.e.dabinett@sheffield.ac.uk](mailto:g.e.dabinett@sheffield.ac.uk). You should keep this information sheet for further reference and if you decide to participate in the interview, you will also receive a signed copy of the consent form to keep. Thank you for taking the time to read this information sheet and to consider participating in the interview.

Kind Regards, Fahyre Andrade de Alencar Loiola

[Date]

## Appendix 5: Consent Form

**Title of Research Project:**

**Name of Researcher:**

**Participant Reference number:**  
**Initials**

**I have read the information sheet provided explaining this research project and understood its contents. I also had the opportunity to ask questions about the project.**

☐

**I confirm that I have voluntarily agreed to participate in this interview.**

☐

**I understand that I have the right to cancel recording permission and/or withdraw from the interview at any time without providing any reasons. I also understand that I am free not to answer or comment on any particular question without negative consequences.**

☐

**I give permission for this interview to be digitally recorded.**

☐

**I understand that my personal information and comments will be securely and confidentially stored.**

☐

**I give permission for the disclosure of my role ☐ and/or title ☐ in:**

This research project only.

Any publication that may result from this research, including future research.

☐  
☐

**I agree with the use of the information and comments provided by me in the interview, including as direct quotes, in:**

This research project only.

Any publication that may result from this research, including future research.

☐  
☐

*I have read and understood the above consent form and agree to participate in the interview.*

\_\_\_\_\_  
Name of Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

*To be signed and dated in presence of the participant*

\_\_\_\_\_  
Lead Researcher

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

*To be signed and dated in presence of the participant*

## Appendix 6: List of interviewees per group and job title

Interview number	Group	Job Title	Date of Interview
1	Technical	Consultancy general director	28/10/2011
2	Technical	Consultancy technical director	04/11/2011
3	Technical	Social specialist	06/02/2012
4	Private	Private investor 1	07/02/2012
5	Private	Private investor 2	08/02/2012
6	Private	Private investor 3	08/02/2012
7	Private	Private investor 4	09/02/2012
8	Technical	Consultancy administrative coordinator	09/02/2012
9	Technical	Communication company adviser	14/02/2012
10	Public	PPP Unit Secretary	14/02/2012
11	Private	Private investor 5	29/02/2012
12	Technical	Urban mobility specialist	01/03/2012
13	Technical	Consultancy technical director	02/03/2012
14	Technical	Consultancy legal specialist	13/03/2012
15	Public	City Centre Secretary	15/03/2012
16	Public	Architect (City Centre Secretariat)	15/03/2012
17	Technical	Consultancy general director	22/03/2012
18	Private	Private investor 6 (Executive)	23/03/2012
19	Public	Legal specialist (City Centre Secretariat)	24/03/2012

Interview number	Group	Job Title	Date of Interview
20	Technical	Communication specialist (City Centre Secretariat)	27/03/2012
21	Public	Infrastructure Secretary	04/04/2012
22	Public	City Attorney	11/04/2012
23	Technical	Consultancy coordinator	26/04/2012
24	Private	Private investor 7	11/05/2012
25	Public	Finance Secretary	14/05/2012
26	Private	Private investor 8	24/05/2012
27	Technical	Legal advisor (Sao Paulo Office)	12/06/2012
28	Technical	Tendering process specialist	12/06/2012
29	Public	Municipal Councillor/President of City Hall	15/06/2012
30	Public	City Attorney General	19/06/2012
31	Public	PPP Unit legal specialist	20/06/2012
32	Public	Legal specialist (City Centre Secretariat)	21/06/2012
33	Technical	Urban transportation specialist	26/06/2012
34	Private	Private investor 6 (Executive)	04/07/2012

Private	9
Technical	14
Public	11
<b>Total of Interviews</b>	<b>34</b>